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BUSINESS LAW

FOR

BUSINESS MEN

STATE OF CALIFORNIA

A Reference Book Showing the Laws of California for
Daily Use in Business Affairs

NINTH EDITION

Revised and Enlarged

By A. J. BLEDSOE

Member of Legislature of California from Humboldt County, Sessions of
1891, 1893, 1895

AUTHOR OF

"Business Law for Business Men, State of Oregon."
"Business Law for Business Men, State of Washington."
"Business Law for Business Men, State of New York."

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BY

A. J. BLEDSOE

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PREFACE TO NINTH EDITION.

The ninth edition of my business law book is now offered to the public. The work is enlarged from 675 to 1021 pages; several new and important subjects are added, including "Trust Deeds," "Taxes and Tax Titles," "Guaranty of Accounts," "Powers of Attorney," and "Automobile Law of California."

The new matter added to the book is all of great importance, and the old subjects have been revised to date.

The success of the preceding eight editions of this work has been phenomenal, so much so that I may claim "Business Law for Business Men" is now a standard work, and worthy of a prominent place in any library. The work of keeping the book up to date by printed slips will be continued in the future, for the same yearly charge of one dollar, and these slips can be used for the ninth edition by old subscribers who purchase the new book.

There is every reason to believe that the new edition will meet with equal favor with those of the past, for which favorable reception by the public I wish to express my continued and sincere appreciation.

My experience and observation during a busy life in the practice of law have served to demonstrate to me that much vexatious and expensive controversy, arising from a lack of knowledge of the laws of the State on matters of everyday business, might be avoided, if business men had the means of ascertaining at the moment what their rights and liabilities would be.

Men usually go to a lawyer after a controversy has occurred, and seek a lawyer's advice, not to keep out of trouble, but to be extricated from it. The plan of this work is to so arrange and illustrate the laws of California pertaining to ordinary business affairs, and rights and obligations in many relations of life, that a busy man can turn immediately to the page and section and find the information he needs, before assuming a liability himself or attempting to enforce a right against others.

A. J. BLEDSOE.

Q B (v)

WHAT SUPREME COURT JUDGES HAVE SAID.

JUDGE WALTER VAN DYKE.

About a year before his death, Walter Van Dyke wrote the following letter concerning one of the earlier editions of the book:—

JUDICIAL DEPARTMENT, SUPREME COURT,
CHAMBERS OF ASSOCIATE JUSTICE WALTER VAN DYKE.

SAN FRANCISCO.

A. J. BLEDSOE, ESQ., Attorney at Law.

Dear Sir:—

I have received a copy of your book entitled "Business Law for Business Men," and you will please accept my thanks for the same. The book contains the code law of the State, conveniently arranged, bearing upon the most important subjects pertaining to business affairs, and c. 216. fail to be of great service to business men, for whose benefit it appears to have been specially intended, but will also prove to be very convenient and useful to the practicing lawyer.

Very truly yours,

WALTER VAN DYKE.

JUDGE F. M. ANGELLOTTI.

STATE OF CALIFORNIA,
JUDICIAL DEPARTMENT, SUPREME COURT,
CHAMBERS OF ASSOCIATE JUSTICE FRANK M. ANGELLOTTI.

SAN FRANCISCO.

A. J. BLEDSOE, ESQ.

Dear Sir:—

I appreciate your courtesy in sending me a copy of your book, "Business Law for Business Men," and the limited examination I have been able to give it satisfies me that it is a very creditable work, containing much useful information.

Yours very truly,

F. M. ANGELLOTTI.

JUDGE LUCIEN SHAW.

STATE OF CALIFORNIA,
JUDICIAL DEPARTMENT, SUPREME COURT,
CHAMBERS OF ASSOCIATE JUSTICE LUCIEN SHAW.

SAN FRANCISCO.

MR. A. J. BLEDSON.

Dear Sir:—

I have examined your "Business Law for Business Men" with some care, and am very much pleased with it. It is concise, the style is clear, and the matter generally accurate and complete. It is the best work of the kind that I have seen.

Yours very truly,

LUCIEN SHAW.

CHIEF JUSTICE BEATTY.

STATE OF CALIFORNIA,
JUDICIAL DEPARTMENT, SUPREME COURT,
CHAMBERS OF THE CHIEF JUSTICE.

SAN FRANCISCO.

A. J. BLEDSON, ESQ.

Dear Sir:—

At the time I received your book ("Business Law for Business Men"), and for some time after, I was too busy to examine it with any care, and only lately have done so. As the result of such examination, I am happy to say that I find it very accurate and trustworthy, and should think it would be very useful to non-professional men in ordinary matters of business.

Yours truly,

W. H. BEATTY.

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PART I.

BUSINESS CONTRACTS AND LEGAL OBLIGATIONS.

Making of Contracts.

Section 1.—BUSINESS CONTRACTS.—By the above heading is meant the contracts and obligations which are connected directly with the usual business affairs of a community. There are many relations in life which constitute or arise out of contracts, and yet which are not connected with the ordinary business affairs of men. Such relations it is not the purpose of this book to indicate, but only the contracts, the obligations, the rights and liabilities of business men in every-day affairs, as defined by the laws of California.

Section 2.—PARTIES TO CONTRACTS.—A contract is an agreement to do or not to do a certain thing. It is essential to the existence of a contract that there should be parties capable of contracting, their consent, a lawful object, and a sufficient consideration. With reference to the parties to a contract, the law of California provides that all persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights. A minor in this State cannot, under the age of 18, make a contract relating to any interest in real property, or relating to any personal property not in his immediate possession or control. But a minor may make any other contract, and it will be good, unless disaffirmed and repudiated. The contract of a minor, if made by him before he is eighteen years of age, may be disaffirmed by the minor himself,

either before his majority or within a reasonable time afterwards, or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor when he is over the age of 18, he can disaffirm it, but must restore the consideration to the party from whom it was received, or pay its equivalent. There is one exception to the law above stated: A minor cannot disaffirm a contract, because he was under age, to pay the reasonable value of things necessary for his support or the support of his family, if the contract was entered into by him when he was not under the care of a parent or guardian able to provide for him or his family.

A minor in California is a male under the age of 21 or a female under the age of 18.

A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family. Where a person is of unsound mind, and yet is not entirely without understanding, he may enter into a contract at any time before his unsoundness of mind has been judicially determined, but such contract will be voidable, subject to rescission. After his incapacity has been judicially determined, a person of unsound mind cannot make any conveyance or other contract, until a court has decided that his reason is restored.

A person deprived of civil rights is not capable of making a contract while in that condition. A person is deprived of civil rights when he is sentenced to imprisonment in the State Prison for life, and his civil rights are suspended during the term when he is sentenced for a term less than life. A convict may, however, make and acknowledge a sale and conveyance of property.

With the exceptions above stated, all persons in California are capable of being parties to contracts.

Civil Code, Sections 33, 34, 38, 39, 40, 1556; Penal Code, Sections 673, 674, 675.

(a) **Contracts of Married Women.**—A married woman has all the rights in respect to property, real or personal; and the acquisition, use, enjoyment and disposition thereof; and to make contracts in respect thereto with any person, including her husband; and to carry on any business, trade or occupation; and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried.

Judgment for or against a married woman may be rendered and enforced in any court, as if she was single.

A contract made by a married woman does not bind her husband or his property.

Civil Code, Sections 158, 162.

Section 3.—CONSENT OF PARTIES TO CONTRACT.—To constitute a valid contract, the consent of the parties to it must be freely given, and there must be a mutual consent, and their consent to the agreement must be communicated by each to the other. The laws of California but follow the principles of natural justice when they provide that, when the consent of a party to a contract is not given freely and voluntarily, but is obtained by fraudulent acts or misrepresentations, the contract cannot stand, and will be set aside by the courts whenever the facts are proved. Some of the facts which will render a contract invalid, by reason of insufficient consent of the parties, are where the consent of any party has been obtained by imprisonment of the person, or unlawful detention of his property, or threats to injure his person, property, or character, or deceiving him by misrepresenting or concealing the truth, or by making a promise without any intention of performing it. Whenever any of these facts appear, to the injury of a party, the courts of California will set aside the contract. Also, a contract will be set aside, because free consent was not given, whenever one party in whom another has confidence uses that confidence for the purpose of taking an unfair advantage over the latter, or whenever one party takes an unfair advantage

of another's weakness of mind, or whenever one party takes a grossly oppressive and unfair advantage of another's necessities or distress. Also, consent will not be considered mutual and free, whenever a mistake is made in entering into a contract, where either party, without negligence on his part, acts under an unconscious ignorance or forgetfulness of a fact, past or present, material to the contract, or acts in the belief that a thing material to the contract exists or has existed when in fact the thing does not exist and never did exist. Also, a contract will be set aside whenever all the parties act under a misapprehension of the law, all supposing that they know and understand it; also, because of misapprehension of the law by one party to a contract, of which the other party is aware at the time of contracting, but which he does not rectify.

Civil Code, Sections 1565, 1567, 1569, 1570, 1572, 1575, 1577, 1578.

Section 4.—WHEN CONSENT IS NOT MUTUAL.—

Consent of the parties is not mutual unless the parties all agree upon the same thing in the same sense.

Civil Code, Section 1580.

Section 5.—PROPOSAL OF CONTRACT, ACCEPTANCE, AND REVOCATION.—

One party may propose a thing, but the proposal must be accepted before a contract is created. An acceptance must be absolute and unqualified. If one party makes a proposition, and the other replies with a proposition on his part, there is no contract, because the parties have not mutually agreed upon anything. The proposal may be revoked at any time before it is accepted. It is revoked by giving notice of its withdrawal to the person to whom the proposal was made. It is also revoked, where a certain time was given in which to accept, by the expiration of that time without notice of acceptance; it is also revoked by the failure of the person to whom the proposal is made to do some act which is

required of him as a condition preceding the acceptance; and a proposal is necessarily considered revoked by the death or insanity of the proposer. Any usual and reasonable mode of giving notice of acceptance of a proposal may be adopted, as, by mail, or in person; or by messenger, and it will be sufficient to constitute a contract. But the proposer may prescribe a certain mode in which notice of acceptance must be given, and the proposer will not be bound unless the mode prescribed by him is adopted.

Civil Code, Section 1582, 1583, 1585, 1586, 1587.

Section 6.—OBJECTS OF CONTRACT.—The object of a contract must be lawful when the contract is made, and possible of performance, and certain in its terms. However, the law considers everything possible except that which is impossible in the nature of things, and, therefore, to render a contract invalid for impossibility of performance, it must be apparent from the nature of the thing agreed upon that it will not be possible to perform it. Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void. But where a contract has several distinct objects, of which one at least is lawful, in whole or in part, the contract is void as to the unlawful object, and valid as to the rest.

Civil Code, Sections 1595, 1596, 1597, 1598, 1599.

Section 7.—CONSIDERATION OF A CONTRACT.—The consideration of a contract need not necessarily be money. Of course, the consideration must be lawful, that is, it must not be contrary to any express provision of law, or against the policy of express law, or contrary to good morals. But the consideration may consist in any benefit conferred or agreed to be conferred upon the promisor by any other person, to which the promisor is not already lawfully entitled, or in any prejudice suffered or agreed to be suffered by the person to whom the promise is made, which

he is not already lawfully bound to suffer. The abandonment of a right, or forbearing to enforce a claim, or any detriment suffered by the promisee, will constitute sufficient consideration for a contract, and be as binding as though the payment of money were agreed upon.

Civil Code, Sections 1605, 1607, 1667.

Section 8.—WHAT CONTRACTS MAY BE VERBAL.

—All contracts may be entered into verbally, except such as are specially required by law to be in writing. If the contract is one which the law does not specially require to be in writing, the verbal agreement of the parties is as good as any other, and as binding as it would be if reduced to writing.

Section 9.—WHAT CONTRACTS MUST BE IN WRITING.

—The law of California provides that the following contracts are invalid, unless the contract, or some note or memorandum describing its terms, is put into writing and subscribed by the party to be charged, or by his agent: (1) An agreement that by its terms is not to be performed within a year from the making thereof; (2) A special promise to answer for the debt, default, or mis-carriage of another; but there is one exception to this provision, where it appears that the promise was such as the law considers an original obligation on the part of the promisor; (3) An agreement made upon consideration of marriage, other than a mutual promise to marry; (4) An agreement for the sale of goods, chattels, or things in action, at a price not less than two hundred dollars, unless the buyer accepts or receives part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but, when a sale is made at auction, an entry by the auctioneer in his sale book, at the time of the sale, of the kind of property sold, the terms of the sale, the price, and the names of the purchaser and person on whose account

the sale is made, is a sufficient memorandum; (5) An agreement for the leasing for a longer period than one year, or for the sale of real property, or for an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, and subscribed by the party sought to be charged; (6) An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or commission; (7) An agreement which by its terms is not to be performed during the lifetime of the promisor; (8) Or an agreement to devise or bequeath any property, or to make any provision for any person by will.

Civil Code, Section 1624.

Section 10.—CONTRACTS AGAINST PUBLIC POLICY.—There are certain contracts which the law says are against public policy, and therefore invalid. Generally any contract which has for its object the violation of any law of the land would be illegal, without reference to the question of public policy. But the State recognizes the usual and natural distinctions between morality and immorality, that which is inherently right and that which is inherently wrong, and forbids, on the ground of public policy, certain contracts which may not be forbidden by the statutes. Therefore it is said that all contracts in violation of morality are void; that agreements to do acts forbidden by the law of God, or which are manifestly in furtherance of immorality, and tend to contaminate the public mind, can not be enforced in the courts of this State. Some illustrations of this rule are, where lodgings are leased for purposes of prostitution; where a contract is made for the printing or sale of obscene or libelous books; so, also, contracts to prevent competition at an auction sale, contracts in restraint of trade, contracts in restraint of marriage, marriage brokerage contracts, wagers, and gambling contracts; all of these, or others of like character, are opposed to good morals, and are void, whether expressly prohibited by statute or not.

Section 11.—CONTRACTS IN RESTRAINT OF TRADE.—Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void. The courts have found great difficulty, however, in determining what are contracts in restraint of trade, within the meaning of the law. It is the public policy to encourage trade and traffic, and any contract which would have the effect of depriving the public of the advantages of competition in trade is void, as opposed to public policy. Thus, where all, or nearly all, of an article of trade or commerce within a community or district is brought within the hands of one man or set of men, so as to practically bring the handling or production of the commodity within such single control, to the exclusion of competition or free traffic therein, this constitutes a monopoly, and is in restraint of trade. Reasonable combinations to regulate prices are valid. But if one agrees with another that he will never again at any time or place work at his trade, or carry on his business, or exercise his profession, such a contract, being without limitation as to time or place, is considered to be in restraint of trade, and is void.

Civil Code, Section 1673.

Section 12.—SALE OF GOOD WILL OF A BUSINESS.—The sale of the good will of a business forms an exception to the law stated in the last Section. One who sells the good will of a business may agree with the buyer that he will not carry on a similar business within a specified county or city, so long as the buyer, or any person to whom the buyer shall dispose of the good will, carries on a like business at the same place. There is an exception, also, in the case of partners. Partners may, upon a dissolution of the partnership, make a valid contract that none of them will carry on a similar business within the whole or a part of the same city or town where the partnership business has been transacted.

Civil Code, Sections 1674, 1675.

Section 13.—ALTERATION OF VERBAL CONTRACT.—Contracts, verbal or written, may be subsequently altered, so as to make the terms or conditions different from what they were at first. But where the contract was verbal only, the law provides that the consent of the parties to its alteration in any respect must be expressed in writing, and where the consent to the alteration is thus given and made, in writing, it does not require a new consideration.

Civil Code, Section 1697.

Section 14.—ALTERATION OF WRITTEN CONTRACT.—A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise. The executed oral agreement, which will be sufficient to alter a previous written contract, must consist in the doing or the suffering of something not required to be done or suffered by the terms of the writing. So, if the parties verbally agree upon the doing of something, which one or the other would be bound to do in the proper fulfilment of the written contract, this does not constitute an executed oral agreement to alter the previous writing.

Civil Code, Section 1698.

Section 15.—EXPRESS CONTRACTS.—An express contract is one the terms of which are stated in words, from which words, used in a writing or orally between the parties, the agreement between the parties is ascertained.

Section 16.—IMPLIED CONTRACTS.—An implied contract is one the existence and terms of which are manifested by the conduct of the parties. The conduct of the parties toward each other, the circumstances surrounding the transaction, may be such that the law will imply that certain agreements were entered into, although no evidence other than such circumstances or conduct may exist as proof of the contracts. The law will imply that

a party did make such a stipulation as, under the circumstances disclosed, he ought, upon the principles of honesty, justice, and fairness, to have made. Thus, if one party accepts the services of another, or receives his goods, having reaped the benefit of such services or goods, the law implies a promise on his part to pay for them.

Civil Code, Section 1621.

Section 17.—TERMINATION OF CONTRACTS.—

A contract is terminated, of course, when it has been fully performed, but it may also be rescinded or canceled under certain circumstances.

Section 18.—RESCISSION OF CONTRACT.—A party to a contract may rescind it, if his consent to it, or the consent of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence on the part of the party as to whom he rescinds, or on the part of any other party to the contract jointly interested with the latter. A party to a contract may also rescind it if, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part; or if the consideration becomes entirely void, for any cause; or if the consideration, before it is rendered to him, fails in a material respect, from any cause. A party to a contract may also rescind it by consent of all the other parties.

Civil Code, Section 1689.

Section 19.—EXTINCTION OF WRITTEN CONTRACT BY CANCELLATION.—The destruction or cancellation of a written contract, or of the signature of the parties, with the intent to extinguish the obligation, does extinguish it as to all the parties consenting to the act. But where a contract is executed in duplicate, the destruction of one copy, while the other exists, will not have the effect of extinguishing the contract.

Civil Code, Section 1699, 1701.

Section 20.—INTERPRETATION OF CONTRACTS.

—The essential thing in the interpretation of a contract, in ascertaining what is meant by it, is to find the intention of the parties. The law of California provides that a contract must be so interpreted as to give effect to the mutual intention of the parties at the time of contracting, so far as that intention is ascertainable and lawful. The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity. When a contract has been reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, oral evidence will be received in the courts to show what the intention of the parties really was, and, when ascertained, the real intention will govern, and the erroneous parts of the writing will be disregarded. The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable. The whole contract is to be considered, in arriving at the intention of the parties. A contract must be given such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if this can be done without a violation of the intention of the parties. Words used in a contract are to be understood in their ordinary and popular sense, unless used by the parties in a technical sense, or unless a special meaning is given to the words by usage or custom. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates. However broad may be the terms of a contract, it extends only to those things which it appears the parties really intended to include in it.

Civil Code, Sections 1636, 1638, 1639, 1640, 1641, 1643, 1644, 1647, 1648.

Section 21.—PRINTED AND WRITTEN PARTS OF CONTRACT.—Where a contract is partly written and partly printed, the written parts control the printed parts. Civil Code, Section 1651.

Section 22.—TIME OF PERFORMANCE OF CONTRACT.—If the time is specified in the contract for its performance, the stipulation of the parties will control. If no time is specified, the law allows a reasonable time. What is a reasonable time for the performance of a contract depends upon the circumstances and the nature of the thing to be done.

Section 22a.—PLACE OF PERFORMANCE.—A contract is supposed to be made at some place, and the place where it becomes complete is the place where it is made. If a contract is made by exchange of letters, or telegrams, it is held to have been made at the place where the letter is mailed or telegram filed, containing an unconditional acceptance by one party of the offer of the other. If the communications are oral, either with or without telephone, between parties on opposite sides of a county line, the law deems the contract to have been made in the county where the offer of one is accepted by the other. (Decided by the Supreme Court of California, in the case of *Bank of Yolo vs. The Sperry Flour Company*, which decision is printed in Volume XXVI, California Decisions, page 936.)

Section 22aa.—CONTRACTS BY LETTER OR TELEGRAPH.—Contracts may lawfully be made by telegraph. And where a person telegraphs a proposal to another, who accepts it by telegraph, these telegraphic communications constitute a contract in writing which the law will enforce.

Where parties have exchanged letters and telegrams with a view to an agreement, and have arrived at a point where a clear and definite proposition is made on one side and accepted on the other, with an understanding that the

agreement shall be reduced to a formal writing, the contract is complete, though no formal writing is ever executed.

Section 22b.—THE ANTI-TRUST LAW.—The State of California has passed laws intended to prevent the formation of trusts or combinations whereby monopolies may be created or maintained. What is known as the Cartwright Law was intended to be a rigid anti-trust law. The law provides:

“A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:—

“1. To create or carry out restrictions in trade or commerce.

“2. To limit or reduce the production, or increase the price of merchandise or of any commodity.

“3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

“4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.

“5. To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any

purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void."

The remainder of the act is taken up with provisions for punishment of those who violate the law. It is made the duty of the attorney-general to bring suit for a forfeiture of the charter of any corporation violating the law, and to enjoin any foreign corporation from further doing business in this state; any person guilty of violating the law is punishable by a fine of not less than fifty dollars nor more than five thousand dollars, or by imprisonment not less than six months nor more than one year, or both such fine and imprisonment; and each day's violation of the provisions of the act constitutes a separate offense. For each day's violation of the law, in any particular, the guilty person, firm, or corporation forfeits fifty dollars, the payment of which may be compelled by the attorney-general or the district attorney. Any person injured in his business or property by a violation of the law, may sue for damages, and when his damages are ascertained, may be given judgment for double the amount.

The intention of the law is evident on its face. It was intended to prohibit combinations of persons, firms, partnerships, corporations or associations by which trade or commerce shall be restrained or production limited, or competition prevented, or the price fixed of an article of merchandise or produce, to the injury of the public at large. If all the manufacturers of salt, or flour, for instance, should enter into a combination and arbitrarily fix the selling price, so as to deprive the public of the advantages of competition, this would be in restraint of trade, and a violation of the law. Or, if all the manufacturers of lumber in California should enter into an agreement that they would shut down their

mills for six months in the year, and thus bring up the price of lumber to a figure which would be oppressive and ruinous to the public in its effects upon building operations, this would be a violation of the intent and spirit of the law. But the law does not intend, nor would the legislature have the power to enact, that a person can no longer do with his own property as he pleases. Notwithstanding the Cartwright Law, the manufacturer may still prescribe the price at which his own brand of a particular commodity shall be sold, the wholesaler may still protect the standing and trademark of any particular article distributed by him by fixing the retail price, the producer may still fix the price of his own product, and any owner of property may still have the right to select his own customers.

(a) **Amendments of 1909.**—The Legislature of 1909 adopted an amendment to the Cartwright law, providing "that no agreement, combination or association shall be deemed to be unlawful or within the provisions of this act, the object and business of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which can not otherwise be so marketed; provided, further, that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms or corporations, engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation, having as its object or purpose the transportation, marketing or delivery of such commodities."

Two new sections were also added to the Cartwright law, reading as follows: "It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade." "Labor, whether skilled or unskilled, is not a commodity within the meaning of this Act."

Act of the Legislature, approved March 20, 1909.

(b) **Decision Under the Cartwright Law.**—A contract for the sale of olive oil by the manufacturer, in which he exacts, as part of the consideration for the sale, a promise by the purchaser that he will not sell the oil for less than a stipulated price, does not tend to create a monopoly and is not in restraint of trade. There is no provision of the Cartwright Act which prohibits the making of such a contract. There is nothing either unreasonable or unlawful in the effort by a manufacturer to maintain a standard price for his goods, but it is simply a means of securing the legitimate benefits of the reputation which his product may have attained. A monopoly exists where all, or so nearly all, of an article of trade or commerce within a community or district is brought within the hands of one man or several men, as to practically bring the handling or production of the commodity within such control to the exclusion of free traffic therein. The producer is, in the first instance, under no obligation to sell his product; and when he does sell it, he has the right to exact, as part of the consideration for the sale, a promise by the purchaser that he will not sell it at less than a stipulated price. (Decided by the Supreme Court of California, in the case of *Grogan vs. Chaffee*, which decision is printed in Volume XXXVII, California Decisions, page 522.)

Section 22c.—CONTRACTS COMING DUE ON A HOLIDAY.—Where a contract by its terms requires the payment of money, or the performance of a condition, on a legal holiday, such payment may be made or condition performed on the next business day succeeding such holiday, with the same force and effect as if made or performed on the day named in the contract.

(a) **What Are Holidays.**—The following are legal holidays in the State of California: Every Sunday, the first day of January, twelfth day of February, to be known as Lincoln Day, twenty-second day of February, thirtieth day of May, fourth of July, ninth day of September, first Monday in September, twelfth day of October, to be known

as Columbus Day, twenty-fifth day of December, every day on which an election is held throughout the state, and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday.

If the first day of January, twelfth day of February, twenty-second day of February, the thirtieth day of May, the fourth day of July, the ninth day of September, the twelfth day of October or the twenty-fifth day of December falls upon a Sunday, the Monday following is a holiday.

Every Saturday from twelve o'clock noon until twelve o'clock midnight is a holiday as regards the transaction of business in the public offices of this state, and also in political divisions thereof where laws, ordinances or charters provide that public offices shall be closed on holidays; provided, this shall not be construed to prevent or invalidate the issuance, filing, service, execution or recording of any legal process or written instrument whatever on such Saturday afternoons.

Act of the Legislature, approved April 26, 1911.

Agreements for Sale.

Section 23.—KINDS OF AGREEMENTS FOR SALE.

—An agreement for sale is either (1) an agreement to sell, (2) an agreement to buy, or (3) a mutual agreement to sell and buy. The difference between a sale and an agreement for sale is, that in a sale the subject of the contract becomes the property of the buyer as soon as the contract is concluded; while in an agreement for sale the title to the property remains in the vendor until the contract is executed. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing. An agreement to sell is a contract by which one engages, for a price, to transfer to another the title to a certain thing. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another, who engages to

accept the same from him and to pay a price therefor. Any property which, if in existence, might be the subject of sale, may be the subject of an agreement for sale, whether the property itself is then in existence or not.

Civil Code, Sections 1726, 1727, 1728, 1729, 1730.

Section 24.—AGREEMENT TO SELL REAL PROPERTY.—An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. No agreement for the sale of real property, or any interest in real property, is valid, unless the agreement, or some note or memorandum of its terms, be in writing and subscribed by the party to be charged or his agent. If the agreement, or the note or memorandum of it, is subscribed by the agent of the party, it is necessary to the validity of the instrument that the agent's authority from his principal shall be in writing, also.

Civil Code, Sections 1731, 1741.

Section 24a.—FORM OF AGREEMENT TO SELL REAL PROPERTY.—Agreements to sell real property are usually prepared in the form of a bond for a deed. The following form will be sufficient under the laws of California:

AGREEMENT FOR SALE OF REAL ESTATE.—
This Agreement, made and entered into the.....
day of....., 191., between.....
....., of the County of.....
....., State of California, the party of the first
part, and
of the same place, the party of the second part, witnesseth:
That the said party of the first part, in consideration of
the covenants and agreements on the part of the said party
of the second part hereinafter contained, agrees to sell and
convey unto the said party of the second part, and said
second party agrees to buy, all those certain lots or parcels
of land, situate in the County of.....
State of California, bounded and described as follows, to-
wit:
.....

(Here insert description of property.)

.....
for the sum of.....Dollars, lawful money
of the United States; and the said party of the second part,
in consideration of the premises, agrees to pay to the said
party of the first part, the said sum of.....
Dollars, in gold coin of the United States, at the times
and in the amounts as follows, to-wit:

(Here insert terms of payments agreed upon.)

.....
It is agreed that all deferred payments shall bear interest
at the rate of per cent per annum, payable
semi-annually.

And the said party of the second part agrees to pay all
State, City, and County taxes, or assessments of whatso-
ever nature, which are or may become due on the premises
above described.

In the event of a failure to comply with the terms hereof
by the said party of the second part, the said party of the
first part shall be released from all obligation in law or
equity to convey said property, and the said party of the
second part shall forfeit all right thereto.

Time is of the essence of this contract.

And the said party of the first part, on receiving such
payment, at the time and in the manner above mentioned,
agrees to execute and deliver to the said party of the second
part, or to his assigns, a good and sufficient deed to the
premises herein described, free and clear of encumbrances.

And it is understood that the stipulations aforesaid are
to apply to and bind the heirs, executors, administrators,
and assigns of the respective parties hereto.

IN WITNESS WHEREOF, we have hereunto set our
hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(If the above agreement is intended to be recorded, it must
be acknowledged.)

**Section 24b.—OPTION TO BUY REAL PROP-
ERTY.**—The owner may give another person an option to
buy his property, the purchase then depending upon the
mere will of the person receiving the option. The holder of

an option is not bound to take the property, but the owner who signed the option is bound to sell, if he is notified, before the option expires, of the intention of the holder to accept the condition of the option. If the holder of the option elects to take the property, he must notify the owner, before the time stated in the option expires, that he will pay the price fixed and demand a deed to the property. Before the time expires, the option holder should tender the price and demand his deed. If the owner refuses to make a deed, when the money is tendered, the courts can be called upon to enforce the option and compel the execution of a good and sufficient conveyance.

Section 24c.—FORM OF OPTION.—The following is a form of an option to be used in this State:

AGREEMENT FOR SALE OF REAL ESTATE.—
For the consideration of.....Dollars,
to me in hand paid, the receipt of which is hereby acknowl-
edged, I hereby agree to sell to.....
or assigns, at any time within.....days
from the date hereof, the following-described real estate,
situate in the County of.....State of California,
to wit:

(Here describe the property.)

.....
for the sum of.....Dollars, payable
as follows, to-wit:

(Here insert terms agreed upon.)

.....
I will furnish the said.....
within.....days from date, a complete and accu-
rate Abstract of Title to said land.

Time is of the essence of this agreement.

I have received from said.....
..... the sum ofDollars
as a deposit, which I will credit him with on the purchase
price, should he complete the purchase; otherwise, I am

to retain the said.....Dollars, for
my own use, as liquidated damages.

In witness whereof I have hereunto set my hand and seal
this.....day of.....191..

.....(Seal.)

Section 25.—AGREEMENT TO SELL PERSONAL PROPERTY.—If an agreement is made to buy or sell personal property, and the price is two hundred dollars or over, the agreement is not valid unless the agreement itself, or some note or memorandum giving its terms, is in writing, and subscribed by the party to be charged or his agent. There is an exception to the law, which is where an agreement is made to manufacture a thing, from materials to be furnished by the manufacturer to another person.

Civil Code, Sections 1739, 1740.

Section 25a.—FORM OF AGREEMENT TO SELL PERSONAL PROPERTY.—The following is a sufficient form of agreement to sell personal property:

AGREEMENT FOR SALE OF PERSONAL PROPERTY.—This Agreement, made the.....day of
....., 191.., between
....., of the County of.....
State of California, the party of the first part, and
....., of the same
place, the party of the second part, witnesseth:

That the said.....
the party of the first part, for the consideration hereinafter
mentioned, agrees to sell to the said.....
....., the party of the second
part, the following-described personal property, situate in
the County of....., State of California,
to-wit:

(Here describe the property.)

.....
said property to be delivered to said party of the second
part, at....., on or before the
.....day of.....191..

In consideration whereof, the said.....
, the party of the
 second part, agrees to pay to the party of the first part the
 sum of.....Dollars, gold coin of the
 United States, on the said.....day of.....
, 191.., or sooner on the delivery of said prop-
 erty as aforesaid.

IN WITNESS WHEREOF, we have hereunto set our
 hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(If agreement is to be recorded, it must be acknowledged.)

Sale of Personal Property.

Section 26.—WHEN GOODS SOLD MUST BE DELIVERED.—One who sells personal property, whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery, and deliver it to the buyer within a reasonable time after demand. This rule will not apply in some cases, however, where the seller has a lien on the property. Until the seller does put the goods into a condition fit for delivery, the title does not pass. Title does not pass when the property sold has not been identified, nor when something remains to be done for the purpose of ascertaining the price, as by weighing, measuring, or testing the goods, where the price is to depend upon the quantity or quality of the goods. The property must be delivered within a reasonable time after demand. What is a reasonable time depends upon all the circumstances of the particular transaction.

Civil Code, Section 1753.

Section 27.—WHERE DELIVERY MUST BE MADE.—In the absence of an agreement to the contrary, the place where the property is at the time of the agreement of sale is the place of delivery; or if the article is not then in existence, it is deliverable at the place where it is manufactured or produced.

Civil Code, Section 1754.

Section 28.—WHEN PRICE OF GOODS BOUGHT MUST BE PAID.—Unless by agreement the price is stipulated to be paid at a different time, the law is that the buyer must pay the price of the thing sold on its delivery, and must take it away within a reasonable time after the seller offers to deliver it. Of course, the buyer and seller may agree upon any terms of payment, contrary to the provisions of the law stated above. After personal property has been sold, and until the delivery is completed, the seller must keep the property without charge until the buyer has had a reasonable opportunity to remove it.

Section 29.—RIGHT TO INSPECT GOODS BEFORE ACCEPTANCE.—On an agreement for sale with warranty the buyer has a right to inspect the thing sold, at a reasonable time, before accepting it, and if the seller refuse to permit the buyer to make a reasonable inspection of the thing sold, in a proper manner and at a proper time, the buyer may rescind the contract and refuse to take the goods.

Civil Code, Section 1785.

Section 30.—EXPENSE OF TRANSPORTATION.—One who sells personal property must bring it to his own door, or to some other convenient place, for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer.

Civil Code, Section 1755.

Section 31.—BUYER'S DIRECTIONS AS TO MANNER OF SENDING THINGS SOLD.—If a seller agrees to send the thing sold to the buyer, he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. Therefore, if the buyer directs that the goods be shipped by a certain line or lines of carriers, the seller, if he desires to avoid the risk of transportation, must obey the buyer's directions. If he follows such directions, the transportation is at the risk of the buyer. Also, if there are no special

directions by the buyer as to the manner of shipment, and the seller uses ordinary care in forwarding the goods, the transportation is at the buyer's own risk.

Civil Code, Section 1757.

Section 31a.—THE BULK LAW.—The Legislature of 1903 passed an Act, approved by the Governor, March 10, 1903, intended to prevent the fraudulent sale of a stock in trade. This law provides that the sale, transfer, or assignment of a stock in trade (or of such a quantity of a stock in trade as to be substantially the whole thereof), in bulk, is to be conclusively presumed fraudulent and void, as against the existing creditors of the vendor, unless notice is first given by the vendor. The notice must be in writing, and must be recorded in the county where the stock of goods is located, at least five days prior to the sale or transfer. If the stock is located in two or more counties, the notice must be recorded in each county; for instance, if the vendor has a store in Sonoma County and a store in Mendocino County, and intends to sell or transfer the stock in both, he must file his notice in the office of the County Recorder in each county. The required notice must, to be legal, be in writing, and must state the name and address of the vendor, transferrer, or assignor; the name and address of the intended vendee, transferee, or assignee; a general statement of the character of the property or merchandise intended to be sold, transferred, or assigned; the time and place of the payment of the purchase price agreed upon; or, if the intended sale is to be at public auction, the notice must state that fact in addition, with the time, terms, and place of such sale. The sale shall in no event occur within five days of the date when the notice is recorded. The above law does not apply to the sale of goods in the ordinary course of trade and in the usual method of business. It is intended only to protect the wholesaler against the sale or transfer or assignment by the retailer of his stock of goods before they are paid for by him. The effect of the law is this: If a stock is sold without the notice, the

wholesaler can follow the goods, and recover from the vendee whatever damages he has sustained by reason of the fraudulent sale, transfer, or assignment; and if the notice is given, the wholesaler will have an opportunity to protect himself by suit and attachment of the property within the five days. The law does not apply to a case where the debtor makes an assignment of the property for the benefit of creditors generally, nor does it apply to any sale, transfer, or assignment of any property which is by law exempt from execution. For a list of property exempt from execution, see under the head of "Attachments."

Statutes of 1903, p. 111.

FORM OF NOTICE OF SALE OF STOCK OF GOODS:—

Notice is hereby given that.....,
 residing at....., vendor,
 has sold to....., vendee,
 residing at, all that
 property or merchandise belonging to the vendor now located
 at, and particularly
 described as follows, to-wit: A stock of groceries (or other
 merchandise, describing it) now in the store at No.....
 Howard Street, in the City and County of San Francisco,
 State of California; that the purchase price agreed upon is
 the sum ofDollars, and that
 the said agreed purchase price will be paid by the vendee to
 the vendor on the.....day of....., 191..
 at No.....Street, City and County of San Francisco,
 State of California; that the name of the vendor is.....
, and that he
 resides at....., and that the
 name of the vendee is.....,
 and he resides at.....

Vendor.

Subscribed and sworn to before me this.....day
 of....., 191..

Notary Public in and for the City and County
 of San Francisco, State of California.

Section 31b.—BILL OF SALE.—A bill of sale need not be in any particular form to be valid. It is not essential to its validity that it be recorded, although it may be for the best interests of all parties that it should be filed for record. A bill of sale is not required to be acknowledged, if it is not to be recorded; but it must be acknowledged, if it is to be recorded.

Section 31c.—FORM OF BILL OF SALE.—The following is a form of bill of sale:—

KNOW ALL MEN BY THESE PRESENTS, That I,

 of the County of....., State of California, the
 party of the first part, for and in consideration of the sum
 of.....Dollars, gold coin of the United
 States of America, to me in hand paid by.....
, of....., the party
 of the second part, the receipt whereof is hereby acknowl-
 edged, do by these presents grant, bargain, sell, and convey
 unto the said party of the second part, his executors, ad-
 ministrators, and assigns, the following described personal
 property:

(Here describe property sold.)

.....
 To have and to hold the same to the said party of the sec-
 ond part, his executors, administrators, and assigns forever.
 And I do for myself, my heirs, executors, and adminis-
 trators, covenant and agree to and with the said party of the
 second part, his executors, administrators, and assigns, to
 warrant and defend the sale of said property, goods, and
 chattels hereby made, unto the said party of the second
 part, his executors, administrators, and assigns, against all
 and every person and persons, whomsoever, lawfully claim-
 ing or to claim the same.

In witness whereof, the said party of the first part has
 hereunto set his hand and seal, the.....day of.....
 191..

.....(Seal.)

Section 31d.—ADULTERATED, MISLABELED OR MISBRANDED FOODS AND LIQUORS.—It is unlawful to brand or label an imitation under the distinctive name of another article of food; or, to label, brand, or color, so as to deceive or mislead a purchaser; or, to put up a domestic product and label it as a foreign product; or, to fail to state on packages the weight or measure, plainly and correctly, when goods are so put up or offered for sale; or, if the label on package goods contains a false or misleading statement regarding the ingredients or the substance contained therein; or, if the goods put up are an imitation or adulteration, or offered for sale under a false name or designation.

Act of the Legislature, approved February 22d, 1909.

The law provides a penalty for its violation, a fine of not less than five nor more than five hundred dollars, or imprisonment in the county jail not exceeding six months, or both such fine and imprisonment.

Food found to be adulterated, mislabeled or misbranded may be ordered destroyed by any court or judge.

No dealer can be prosecuted under the provisions of this act, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated, mislabeled or misbranded within the meaning of the law, and can also establish by satisfactory evidence that the article sold by him was mislabeled and that at the time of making such sale he was not aware of that fact. Said guaranty to afford protection, must contain the name and address of the party or parties making the sales of such article to said dealer, and an itemized statement showing the articles purchased; or a general guaranty may be filed with the secretary of the United States Department of Agriculture by the manufacturer, wholesaler, jobber or other party in the United States and be given a serial number, which number shall appear on each and every package of goods

sold under such guaranty with the words "guaranteed under the food and drugs act June 30, 1906."

Act of the Legislature, approved April 26, 1911.

Section 31e.—COLD STORAGE EGGS AND BUTTER.—Every person, firm, company or corporation, who sells or offers to sell any cold storage eggs or butter as fresh eggs or butter, or by any means whatever represents the same to be fresh eggs or butter, is guilty of a misdemeanor.

Cold storage eggs or butter, that have been in storage for a longer period than three months, must have stamped, marked or branded upon all sides of the receptacle holding the same, in black face letters two inches in length, the period of time during which the same have been in cold storage. Any person, firm, company or corporation selling or offering for sale any cold storage eggs or butter must display in a conspicuous place in the sales room the sign, in black face letters not less than six inches in length upon a white ground, "Cold Storage Eggs or Butter Sold Here." The penalty for violation of this provision is imprisonment in the county jail for a term not exceeding six months or a fine of two hundred and fifty dollars or both.

All butter sold as certified butter must be conspicuously marked with the name of the commission certifying it.

Statutes and Amendments, 1911, pages 285, 356, 382.

(a) **Marking Oleomargarine.**—It is unlawful to sell or offer for sale any oleomargarine or any renovated butter unless the same shall have printed upon each and every package, roll, print, square, and upon any container of such renovated butter or oleomargarine, the words "Renovated Butter" or the word "Oleomargarine," as the case may be, in letters not less than one-half inch in height. And every dealer in oleomargarine or renovated butter must have a license to sell it from the State Dairy Bureau.

Statutes and Amendments, 1911, page 966.

Section 31f.—SANITARY REGULATION OF FOOD PRODUCING ESTABLISHMENTS.—The law provides as follows:

“Every building, room, basement or cellar, occupied, or used as a bakery, confectionery, cannery, packinghouse, slaughterhouse, restaurant, hotel, grocery, meat market, or other place or apartment, used for the production, preparation for sale, manufacture, packing, storage, sale or distribution of any food, shall be properly lighted, drained, plumbed and ventilated, and conducted with strict regard to the influence of such conditions upon the health of the operatives, employees, clerks or other persons therein employed, and the purity and wholesomeness of the food therein produced, kept, handled or sold; and for the purpose of this act the term “food” shall include all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof.

“The floors, sidewalls, ceilings, furniture, receptacles, utensils, implements and machinery of every establishment or place where food is manufactured, packed, stored, sold or distributed, shall at no time be kept in an unclean, unhealthful or unsanitary condition; and for the purposes of this act, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale or distribution is not securely protected from flies, dust, dirt, unsanitary conditions, and as far as may be necessary, by all reasonable means from all other foreign or injurious contamination; and if the refuse, dirt, and the waste products subject to decomposition and fermentation incident to the manufacture, preparation, packing, storing, selling and distributing of food, are not removed daily; and if all trucks, trays, boxes, baskets, buckets, and other receptacles, chutes, platforms, racks, tables, shelves, and all knives, saws, cleavers, and all other utensils, receptacles, and machinery, used in moving, handling, cutting, chopping, mixing, canning, and all other processes used in the preparation of food, are not

thoroughly cleaned daily; and if the clothing of operatives, employees, clerks, and other persons therein employed, is unclean, or if they dress or undress, or leave or store their clothing therein.

"The side walls and ceilings of every bakery, confectionery, hotel and restaurant kitchen, shall be well plastered, or ceiled, with metal or lumber, or shall be oil painted or kept well lime washed, or otherwise kept in good sanitary condition; and all interior woodwork of every bakery, confectionery, hotel and restaurant kitchen, shall be kept well oiled or painted with oil paint, and be kept washed clean with soap and water or otherwise kept in a good sanitary condition; and every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food, shall have an impermeable floor, made of cement or tile laid in cement, brick, wood or other suitable, non-absorbent material which can be flushed and washed clean with water.

"The doors, windows and other openings of every food producing or distributing establishment, where practicable, shall be fitted with stationary or self-closing screen doors and wire window screens, of not coarser than fourteen mesh wire gauze.

"Every building, room, basement or cellar, occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms, separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing, is conducted. The floors of such toilet rooms shall be of cement, tile laid in cement, wood, brick or other non-absorbent material, and shall be washed and scoured daily. Such toilets shall be furnished with separate ventilating pipes or flues, discharging into soil pipes, or on the outside of the building in which they are situated. Lavatories and washrooms shall be adjacent to toilet rooms, and shall be supplied with soap, running water and towels, and shall be maintained in a clean and sanitary condition. Operatives, employees, clerks and all persons

who handle the material from which food is prepared, or the finished product, before beginning work and immediately after visiting a toilet or lavatory shall wash their hands and arms thoroughly in clean water.

"Cuspidors, for the use of operatives, employees, clerks and other persons, shall be provided, and each cuspidor shall be emptied and washed out daily with disinfectant solution, and not less than five ounces of such solution shall be left in each cuspidor while in use. No operative, employee, clerk or other person, shall expectorate or discharge any substance from his nose or mouth, on the floor or interior side wall of any building, room, basement, or cellar where the production, manufacture, packing, storing, preparation or sale of any food is conducted.

"No person shall be allowed to, nor shall be, reside or sleep in any room of a bake shop, public dining-room, hotel or restaurant kitchen, confectionery, or other place where food is prepared, produced, manufactured, served or sold.

"No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar, place or vehicle, occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution or transportation of food, who is afflicted or affected with any venereal disease, small pox, diphtheria, scarlet fever, yellow fever, tuberculosis, consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever, epidemic dysentery, measles, mumps, German measles, whooping-cough, chicken pox, or any other infectious or contagious disease.

"The members of the State Board of Health, inspectors and agents, appointed by said board, and all local health officers and inspectors, shall have full power at all times to enter every building, room, basement, cellar, or any place occupied or used, or suspected of being occupied or used, for the production, manufacture, preparation, storage, sale or distribution of food, and to inspect the premises and all utensils, implements, receptacles, fixtures, furniture and machinery used as aforesaid, and if, upon inspection, any such

building, room, basement, cellar, or any such place, vehicle, employer, operative, employee, clerk, driver, or other person, is found to be in violation or violating any of the provisions of this act, or if the production, preparation, manufacture, packing, storing, sale or distribution of food is being conducted in a manner detrimental to the health of the employees or operatives or to the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination shall at once make a written report of the same to the District Attorney of the county, who shall prosecute all persons violating any of the provisions of this act, and also to the State Board of Health. The State Board of Health, from time to time, as in its discretion it may determine, may publish such reports in its monthly bulletin.

"All buildings, rooms, basements, cellars, and other places and things, kept, maintained, or operated, or which are, in violation of the provisions of this act or any of them, and all food produced, prepared, manufactured, packed, stored, kept, sold, distributed or transported, in violation of the provisions of this act or any of them, are hereby declared to be public nuisances, dangerous to health. Such nuisances may be abated or enjoined, in an action brought for that purpose by the local or State Board of Health, or they may be summarily abated in the manner provided by law for the summary abatement of public nuisances dangerous to health.

"Any person, firm or corporation, whether as principal or agent, employer or employee, who violates any of the provisions of this act shall be guilty of a misdemeanor, and each day that conditions or actions, in violation of this act, shall continue, shall be deemed to be a separate and distinct offense, and for each offense, upon conviction, he shall be punished by a fine of not less than twenty-five dollars, nor more than five hundred dollars, or shall be imprisoned in the county jail for a term not exceeding six months, or by both such fine and imprisonment."

Act of the Legislature, approved March 6th, 1909

Section 31g.—POISONOUS CONFECTIONERY.—It is unlawful to manufacture or offer for sale any confectionery containing terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredient deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

Act of the Legislature, approved March 13th, 1909.

Section 31h.—MANUFACTURE OR SALE OF STUFFED FURNITURE.—All persons manufacturing in this State, in whole or in part, any article of hotel, boarding house, lodging house or domestic or office furniture, or beds or mattresses, or cushions, used or intended to be or that could be used by human beings, that are stuffed or made in whole or in part, with material composed in whole or in part from secondhand or cast off clothing, rags, or secondhand, or cast off material of any character whatever, or with shoddy, must at the time of the completion of such manufacture attach to a conspicuous place upon each of such articles so manufactured by him, a label or stamp showing the correct character of the materials with which the cushion portion of such articles of furniture or beds or cushions or mattresses are stuffed; and no person so manufacturing any such articles shall allow the same or any thereof to leave his possession in the course of trade or business unless such label or stamp is so affixed; and no person shall sell, or, offer for sale, in this State any of such articles of furniture, or beds, or mattresses, or cushions, whether the same are manufactured in this State or not, unless such a label or stamp is so affixed.

Any person violating any of the provisions of this law will be guilty of a misdemeanor, and upon conviction may be punished by a fine of not less than fifty, nor more than five hundred dollars, or imprisoned not more than six months, or by both such fine and imprisonment.

Act of the Legislature, approved March 18th, 1909.

Section 31i.—ADULTERATION OF DAIRY PRODUCTS.—It is unlawful to sell or offer for sale any

adulterated milk or other dairy products. To remove all doubt as to what is meant by the term "adulteration," the Legislature has prescribed the following definitions:

Milk and the products of milk shall be deemed adulterated if it or they shall not conform with the following definitions and standards:

1. Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within fifteen (15) days before and five (5) days after calving, and contains not less than three (3.0) per cent of milk fat, and not less than eight and five-tenths (8.5) per cent of solids—not fat.

2. Skim milk is milk from which a part or all of the cream has been removed and contains not less than eight and eight-tenths (8.8) per cent of milk solids.

3. Condensed milk or evaporated milk is whole milk from which a considerable portion of water has been evaporated and contains not less than twenty-four and five-tenths (24.5) per cent of milk solids, including not less than seven and seventh-tenths (7.7) per cent milk fat.

4. Sweetened condensed milk is whole milk from which a considerable portion of water has been evaporated and to which sugar (sucrose) has been added, and contains not less than twenty-four and five-tenths (24.5) per cent of total milk solids, including not less than seven and seven-tenths (7.7) per cent milk fat.

5. Condensed skim milk is skim milk from which a considerable portion of water has been evaporated, and contains not less than eighteen (18) per cent of milk solid.

6. Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen (18) per cent of milk fat.

7. Evaporated cream, or clotted cream, is cream from which a considerable portion of water has been evaporated.

8. Milk fat, or butter fat, is the fat of milk and has a Reichert-Meissel number not less than 24 and a specific gravity not less than .905 (40 degrees C.).

9. Butter is the clean, non-rancid product made by gathering in any manner the fat of fresh ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt, and contains not less than 80 per cent of milk fat.

Act of the Legislature, approved April 22d, 1909.

Act of the Legislature, approved April 21st, 1911.

10. **Unsanitary Dairies.**—A dairy must be kept in a sanitary condition, and it will be deemed unsanitary, if drinking water is stagnant or otherwise impure; if manure in yards is allowed to ferment and decay; if the milk house or milk room is not properly screened to exclude flies and insects—and the milk room or milk house must not be located in or be a part of any residence or barn or poultry house; if the milk is not cooled to as low a temperature as practicable within one hour after it is drawn from the cows.

Stagnant water, manure, privy, vault, urinal, horse stable, open cesspool, pig pen, shall not be permitted within 100 feet of any milk house or room, or within fifty feet of any cow stalls or stanchions or other place where milking is done.

Walls must be kept clean, and the interior of cattle stables, barns, milking sheds, milk houses or milk rooms, must be whitewashed with lime at least once in two years.

Pails, cans, bottles, or other containers of milk, and strainers, coolers, and other utensils, must be sterilized by boiling water or superheated steam each and every time the same are used.

11. **Unsanitary Creamery or Factory.**—A creamery or any factory of dairy products, or any store, depot or other place where milk is handled or kept for sale, shall be deemed unsanitary under the meaning of this act, among other causes that render milk, or products made therefrom, unclean, unwholesome, impure, stale or of low grade or inferior quality, in the following cases:

(a) If milk or cream is received that has reached an advanced stage of fermentation, or that shows a state of putrefactive fermentation, or if it is received in cans or other containers that have not been sterilized by means of boiling water or superheated steam after each delivery.

(b) If the utensils and apparatus that come in contact with milk or its products in the process of manufacture are not thoroughly washed and sterilized by means of boiling water or superheated steam, after each using.

(c) If the floor is so constructed as to permit the flowing or soaking of water, milk or other liquid underneath or among the interstices of such floor, where fermentation and decay may take place, or if such floor may not be readily kept free from dirt.

(d) If drains are not provided that will convey refuse milk, water and sewage away to a point at least fifty yards distant from such creamery or factory of dairy products, or if any cesspool, privy vaults, hog yard, slaughter house, manure or any decaying vegetables or animal matter, shall be within a distance that will permit foul odors to reach any such creamery or other factory of dairy products or store or depot where milk or its products are sold or handled.

(e) If such creamery or factory of dairy products, does not permit access of light and air sufficient to secure good ventilation.

(f) If in any building or buildings used in connection with any creamery, or factory of dairy products, any insects or other species of animal life are permitted, or if upon the floor, the sides or the walls, any milk or its products, or any other filth is allowed to accumulate, or ferment, or decay, or if the bodies or wearing apparel of persons employed, or coming in contact with any milk or its products, in any creamery, or factory of any dairy products, shall be unclean and not washed from time to time with reasonable frequency.

12. Liquid Measurements.—No person, firm or corporation shall hereafter sell, offer for sale, or receive for the purpose

of sale, any milk, skim milk or cream, except such sale, offer, or receipt, shall, as to quantity, be based upon the liquid gallon, containing two hundred and thirty-one cubic inches, or the liquid quart containing fifty-seven and seventy-five one-hundredths cubic inches or the proper and complete liquid subdivision thereof. Provided, that nothing in this act shall be construed as prohibiting the buying and selling of milk or cream either by weight or on the basis of its butter fat contents. And provided further that in any hotel, restaurant, or other eating place, where milk is sold with meals, or where it is sold to be drunk immediately, it may be sold by the glass.

13. Pasteurized Butter.—No person or persons, firm or corporation, by themselves or their agents or employees, shall manufacture for sale, offer for sale, expose for sale, or have in his, its or their possession for sale, any package of butter upon which, or upon the wrapper or container of which there shall be printed or otherwise marked the word pasteurize or any of its derivatives, unless in the process of the manufacture of the butter contained therein either the milk or cream from which the same was made shall have been exposed to a temperature exceeding one hundred and fifty degrees Fahrenheit, or unless in the process of pasteurization such milk or cream be heated to a temperature not less than 140 degrees Fahrenheit and retarded at least twenty minutes in the heat at said temperature.

14. Weight.—It shall be unlawful for any person, firm or corporation to sell, offer for sale, or to cause or permit to be sold or offered for sale, any butter in prints or packages or otherwise other than by or in terms of pounds and ounces, avoirdupois, or for a greater weight than the true net weight thereof.

15. Registration of Dairies.—Every person, firm or corporation operating any dairy, where more than four cows are milked, and every creamery, cheese factory, receiving station,

skimming station, ice cream or ice milk manufacturer, or milk condensary, shall on or before the first day of November of each year, cause to be registered with the secretary of the state dairy bureau a statement showing the full name and address of such person, firm or corporation so operating the same, and also the full name and address of the owner or owners of the business so being operated, in case the person operating the same is not the owner, together with a statement of the class of such business carried on by such person or corporation, and the number of cows then being milked, in case of a dairy.

16. Packages or Wrappers.—In case any butter is sold, or offered for sale, in a package or wrapper purporting to designate the producer of such butter, such producer must be correctly designated; and if under a label purporting or calculated to designate the place of production, it must correctly designate the place where made. No person, firm or corporation shall put up in package or wrapper, or otherwise prepare for shipment or sale, any butter under a label purporting to designate the producer or place of production, except in accordance with the provisions hereof; nor shall any person sell or offer for sale any butter in a package or wrapper purporting to designate the name of the producer or the place of production, except in accordance with the provisions hereof.

17. Imitation Butter or Cheese.—For the purposes of this act, every article, substance, or compound, other than that produced from pure milk, or cream from the same, made in the semblance of butter, and of a color resembling butter, by whatever means the coloring is accomplished, and designed to be used as a substitute for butter made from pure milk or cream, is hereby declared to be imitation butter; and for the purposes of this act, every article, substance, or compound, other than that produced from pure milk, or cream from the same, made in the semblance of cheese, and designed to be used as a substitute for cheese made from pure milk or cream, is hereby declared to be imitation

cheese; provided, that the use of salt, rennet, and harmless coloring matter for coloring the product of pure milk or cream, shall not be construed to render such product an imitation; and provided that nothing in this section shall prevent the use of pure skimmed milk in the manufacture of cheese.

18. Marks on Imitation Butter or Cheese.—Each person, who, by himself or another, lawfully manufactures any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, shall mark the same by branding, stamping, or stenciling upon the top and sides of each tub, firkin, box, or other package in which such article or substance shall be kept, and in which it shall be removed from the place where it is produced or put up, in a clear and durable manner, in the English language, the words “oleomargarine,” or “substitute for butter,” or “substitute for cheese,” as the case may be, in printed letters in plain roman type, each of which shall not be less than one inch in height by one-half inch in width, and in addition to the above shall prepare a statement, printed in plain roman type, of a size not smaller than pica, stating in the English language its name, and the name and address of the manufacturer, the name of the place where manufactured or put up, and also the names and actual percentages of the various ingredients used in the manufacture of such oleomargarine, imitation butter or imitation cheese; and shall place a copy of said statement within and upon the contents of each tub, firkin, box, or other package, and next to that portion of each tub, firkin, box, or other package, as is commonly and most conveniently opened, and shall label the top and sides of each tub, firkin, box, or other package by affixing thereto a copy of said statement, in such manner, however, as not to cover the whole or any part of said mark of “oleomargarine,” “substitute for butter,” or “substitute for cheese.”

19. Possession and Transportation.—No person, by himself or another, shall knowingly ship, consign, or forward by any common carrier, whether public or private, any oleomargarine,

or any substance designed to be used as a substitute for butter or cheese, unless the same be marked and contain a copy of the statement, and be labeled as provided by this act; and no carrier shall knowingly receive the same for the purpose of forwarding or transporting, unless it shall be manufactured, marked, and labeled as hereinbefore provided, and unless it is consigned and by the carrier receipted for by its true name; provided, that this act shall not apply to any goods in transit between foreign states across the State of California.

No person or his agent shall knowingly have in his possession or under his control any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, unless the tub, firkin, box, or other package containing the same, shall be clearly and durably marked and labeled as provided by this act, and also contain a copy of the statement required by this act; and if the tub, firkin, box, or other package be opened, then a copy of the statement described in this act, shall be kept with its face up, upon the exposed contents of said tub, firkin, box, or other package; provided, that this section shall not be deemed to apply to persons who have the same in their possession for the actual consumption of themselves or family, and for no other purpose.

20. Sale of Imitation Butter or Cheese.—No person, by himself or another, shall sell, or offer for sale, or take orders for the future delivery of any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, under the name of butter, or under the pretense that the same is butter or cheese; and no person, by himself or another, shall sell any substance designed to be used as a substitute for butter or cheese, unless he shall inform the purchaser distinctly, at the time of the sale, of its true name and character, and that the same is a substitute for butter or cheese, as the case may be, and shall deliver to the purchaser, at the time of the sale, a separate and distinct copy of the statement described in this act; and no person

shall use in any way in connection or association with the sale, or exposure for sale, or advertisement of any oleomargarine or any substance designed to be used as a substitute for butter or cheese, the words "butterine," "creamery," or "dairy," or the representation of a cow or any breed of dairy cattle, or any combination of such words and representations, or any other words or symbols, or combinations thereof, commonly used by the dairy industry in the sale of butter or cheese.

No keeper or proprietor of any bakery, hotel, boarding house, restaurant, saloon, lunch-counter, or other place of public entertainment, and no person having charge thereof or employed thereat, and no person furnishing board, for others than members of his own family, and no employee where such board is furnished as the compensation or as a part of the compensation of any employee, shall place before any patron or employee, for use as food, any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, unless the same be accompanied by a copy of the statement described in this act, and by a verbal notification to said patron that such substance is a substitute for butter or cheese.

No action can be maintained on account of any sale or other contract made in violation of, or with intent to violate, this act, by or through any person, who was knowingly a party to such wrongful sale or other contract.

Every person having possession or control of any oleomargarine, or any substance designed to be used as a substitute for butter or cheese, which is not marked as required by the provisions of this act shall be presumed to have known, during the time of such possession or control, that the same was imitation butter, or imitation cheese, as the case may be.

No butter or cheese not made wholly from pure milk or cream, salt, and harmless coloring matter, shall be used in any of the charitable or penal institutions that receive assistance from the state.

21. License to Sell.—No person, firm or corporation, by themselves or their agents or employees, shall sell, offer for sale, or expose for sale, or have in his, its, or their possession for sale, any oleomargarine or any renovated butter, unless the same shall have printed upon each and every package, roll, print, square, and upon any container of such renovated butter, or oleomargarine, the words "renovated butter," or the word "oleomargarine," as the case may be in letters not less than one-half inch in height, and who shall not have secured from the State Dairy Bureau, now existing under the laws of this state, a license to sell.

The term renovated butter as used in this act is hereby defined to mean and include butter that has been reduced to a liquid state by melting and drawing off such liquid or butter oil and churning or otherwise manipulating it in connection with milk or any product thereof.

No person, firm or corporation, shall engage in the business or occupation of manufacturing, selling, dealing in, or furnishing renovated butter, oleomargarine, or any substance designed to be used as a substitute for butter, without first having applied for and obtained a license so to do. Any person, firm or corporation, desiring to engage in the business or occupation of manufacturing, selling, dealing in or furnishing to his, its or their patrons, oleomargarine, or any substance designed to be used as a substitute for butter, or imitation butter, or adulterated butter, or renovated butter, as in this act defined, shall first make application each year to the State Dairy Bureau for a license, and upon payment of a license fee to the State Dairy Bureau, said bureau shall issue to the applicant a license. All such licenses shall contain the following proviso: Provided, that this license does not authorize the holder hereof to manufacture, sell, deal in or furnish any oleomargarine, or similar substances designed to be used as a substitute for butter, which contain any coloring matter or which resemble yellow butter in appearance. All said licenses shall expire on June 30th of each year, and may be issued in periods of one year, or less than one year, upon payment of a proportionate part of the license fee. The

fees for issuing said license are hereby fixed at the amounts below named, annually. The fee for issuing said license to manufacturers of any of said substances within this state shall be one hundred dollars, and if issued to wholesale dealers in, or importers or agents for importers of any of said substances the fee shall be fifty dollars, and if issued to retail dealers in any of said substances the fee shall be five dollars, and if issued to the keeper of any hotel, restaurant, boarding house or other place where meals are served and payment is received therefor, either immediately or by the day, week or month, the fee shall be two dollars. The term wholesale dealer includes all persons, firms or corporations, who sell any of said substances in quantities of ten pounds or more at a time or in the same transaction. The term retail dealer includes all persons who sell only in quantities of less than ten pounds. All licenses, while in force, shall be kept conspicuously displayed in the place of business of the party or parties to whom they have been issued.

It shall be unlawful for any person, firm or corporation, to manufacture, buy, sell, deal in, or furnish to his, its or their patrons, or to have in possession, for any purpose whatsoever other than for consumption in his own family, or for transportation in case of a boat or railroad company, or for the purpose of storage in case of a warehouse or cold storage company, any oleomargarine, or similar substance designed to be used as a substitute for butter, or any substance resembling butter, but not made wholly from pure milk or cream, or any imitation butter, or adulterated butter, or renovated butter, as in this act defined, without first having applied for and obtained from the State Dairy Bureau of the State of California, the license herein required.

22. Record of Sales.—Every person, firm or corporation who is required to obtain and hold a manufacturer's or a wholesaler's or importer's license shall keep a correct record in a form separate from all other business in which every sale and purchase of renovated butter, imitation butter, oleomargarine, or any substitute for butter or substance designed

to be used as a substitute for butter, or resembling butter, which substance is not made wholly from pure milk or cream, or any imitation cheese or imitation dairy products of any kind, shall be recorded at the time of the transaction, giving in detail the quantity sold or purchased, the name and location of the buyer or seller, the date, and the place to which it was shipped or delivered, and by whom the order or sale was put up and delivered. Every warehouse, cold storage company, boat, railroad or other transportation company shall keep a correct record of all oleomargarine, imitation butter, renovated butter, substitute for butter, imitation cheese, or other imitation dairy products, which at any time may be in their possession, or which may be transported or stored by them, showing the owner, the quantity and kind of goods, the date when stored, and when removed, in case of warehouses and cold storage companies, and showing the character of goods billed, the quantity, the name and address of consignor and consignee, and the date of transportation, in case of boats and railroad companies.

All said records herein required to be kept, shall at all times during business hours, be open to the inspection of the agents and inspectors of the State Dairy Bureau, and of any officer of any city or county board of health, and of any peace officer of any city or any county of the state.

A failure to keep any of the records herein required to be kept or to permit the inspection of such records, by any inspector or agent of the State Dairy Bureau, or of any city or county board of health, or by any peace officer of any city or county, as herein required, is hereby declared to be a misdemeanor.

23. False Tests or Statements.—Any person, firm or corporation, whether as principal, agent, manager or otherwise, who buys or sells dairy products, or deals in milk, cream, or butter, and who buys or sells the same upon the basis of their richness or weight, or the percentage of cream or butter fat contained therein, who gives or reports to any dairyman or patron a false test, or who uses any apparatus,

test bottle, or other appliance, or who uses the "Babcock test," or machine of like character, for testing such dairy products, cream, or butter, which is not accurate and correct, or which gives wrong or false percentages, or which is calculated in any way to defraud or injure the person with whom he deals, and any owner, manager, agent, or employee of any creamery, condensary, cheese factory, or other person who falsely manipulates, underreads, or overreads the Babcock test, or any other contrivance, used for determining the quality or value of milk or cream, is guilty of a misdemeanor.

24. Inspection by State Dairy Bureau.—The State Dairy Bureau shall from time to time inspect and examine as to their accuracy, or their adaptability to give accurate results, all glassware, measures, scales, weights and other apparatus used in creameries, and factories of dairy products, where milk and cream are purchased, to determine the amount or percentage of fat in milk or cream. Said State Dairy Bureau shall supply at cost, and not oftener than once a year, to every creamery, or other factory of dairy products where milk and cream, or either, are purchased, on application not more than two tubes or bottles and one pipette of the forms used with the Babcock test, which it shall first examine as to accuracy, and if accurate, or adapted to give accurate results under the usual method of operating the Babcock test, said State Dairy Bureau shall certify to this by marking durably and permanently upon each and every piece of apparatus supplied the letters "D. B." Said State Dairy Bureau shall also, upon payment at the rate of one dollar for each dozen, test or examine into the accuracy of all test bottles or tubes and pipettes sent to it direct from any creamery, or other factory of dairy products, where milk or cream are purchased, and if found accurate, or adapted to give accurate results, the letters "D. B." shall be marked upon each piece of apparatus examined.

25. Standard Measure.—The state's standard measure, or pipette, shall have a capacity of seventeen and six-tenths cubic centimeters, and the standard test tubes or bottles for

milk shall have a capacity of one cubic centimeter of mercury at a temperature of 65 degrees Fahrenheit between "zero" and "five" on the graduated scale on the neck thereof; the scale to have a length of not less than six and five-tenths (6.5) millimeters for each per cent, or six and five-tenths centimeters between zero and ten on the graduated scale on the neck thereof. Said scale to be graduated to at least two-tenths of one per cent. The milk fat in the neck of said bottle to be read from the lower line of separation between the fat and the water to the top of the fat column at a temperature not lower than 130 degrees Fahrenheit and not higher than 140 degrees Fahrenheit.

26. The Babcock Test.—All cream sold in the State of California on the basis of the richness or the percentage of milk fat contained therein, shall be tested by the Babcock test, using a weighed sample of eighteen grams, or a weighed sample of nine grams (results to be doubled), weighed on a balance sensitive to 10 milligrams, and tested in a test bottle with a scale graduated to at least five-tenths of one per cent. Said scale to be of a length of at least one centimeter to every five per cent where an eighteen gram sample is used. Where a nine gram sample is used in a bottle graduated for eighteen grams, the test bottle must have a scale graduated to at least two-tenths of one per cent. Said scale to be of a length of at least two centimeters to every five per cent. Where a nine gram sample is used in a bottle graduated for nine grams, the test bottle shall have a scale graduated to five-tenths of one per cent and shall be of a length not less than seven centimeters for every fifty per cent. The milk fat in the test bottle shall be read at a temperature not lower than 130 degrees Fahrenheit and not higher than 140 degrees Fahrenheit. The fat column must be read from the bottom of the lower meniscus to the bottom of the upper meniscus.

Provided, however, that no test bottles now in use in any creamery or other factory of dairy products or by any private party in this state shall be condemned or declared unfit for

use prior to the expiration of one year from the taking effect of this act, if the scale thereof is correctly calibrated.

27. Meaning of "Product of Milk."—It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell or offer for sale, or have on hand for sale, any milk, including condensed or evaporated milk, or any product of milk, that is adulterated within the meaning of this act. The words "product of milk" as used in this act, shall not apply to any product into which milk, or a product of milk, may enter as an ingredient or component of a food product that does not consist of milk, or milk products alone, such as pastry, and confectionery; provided, that this section shall not be construed to prevent the use of common salt (chloride of sodium) in dairy products. Any label, printed matter, or advertising or descriptive matter appearing upon, or in connection with any package, parcel or quantity of milk or milk products when being sold, offered for sale, or having on hand for sale, and having reference to the article being sold, offered for sale, or on hand for sale, shall conform to the provisions of this act, and if it fails to conform to the provisions of this act, such article shall be deemed adulterated within the meaning of this act. It shall be unlawful for any person under this act, when selling, or offering for sale, or having on hand for sale, milk or any product of milk to use the words "milk," "condensed milk," "sweetened condensed milk," "skim milk," "condensed skimmed milk," "evaporated cream," "cream," "butter," "cheese," "butter-milk," "ice cream," or "ice milk," either verbally, or printed or written on any label or printed matter, in connection with the sale, or offering for sale, or having on hand for sale, of milk or any product of milk, or upon any bill of fare used in any hotel, restaurant or other places where meals are served, when the article shall not conform to the standards and provisions of this act.

28. Cheese and Its Marks.—Cheese is the sound, solid, and ripened product made from milk or cream, by coagulating the casein thereof with rennet or lactic acid, with or without

the addition of ripening ferments and seasoning, and with or without salt and harmless coloring matter. All cheese marked "Full cream cheese," or "Full milk cheese," must contain in the water-free substance, not less than fifty per cent (50%) of milk fat. All cheese marked "Half skim cheese," must contain in the water-free substance not less than twenty-five (25) per cent of milk fat. All cheese not plainly marked or branded as to its quality must contain in the water-free substance not less than fifty (50) per cent of milk fat.

29. Ice Cream.—Ice cream is the frozen product, made from pure sweet cream and sugar with or without a harmless flavoring or coloring, and contains not less than twelve (12) per cent of milk fat, and not more than six-tenths (.6) of one per cent of pure and harmless vegetable gum or gelatin.

Fruit ice cream is the frozen product made from pure, sweet cream, sugar, and sound, clean, mature fruits, and contains not less than ten (10) per cent of milk fat, and not more than six-tenths (.6) of one per cent of pure and harmless vegetable gum or gelatin.

Nut ice cream is the frozen product made from pure, sweet cream, sugar, and sound, non-rancid nuts, and contains not less than ten (10) per cent of milk fat, and not more than six-tenths (.6) of one per cent of pure and harmless vegetable gum and gelatin.

Ice milk is the frozen product, containing less fat than ice cream, and made from pure, sweet milk and sugar, with or without a harmless flavoring or coloring, and contains not less than two and four-tenths (2.4) per cent of milk fat, and not more than six-tenths (.6) of one per cent of pure and harmless vegetable gum or gelatin.

30. Skimmed Milk.—It shall be unlawful for any person, firm or corporation to sell, exchange or deliver, or to offer for sale, exchange or delivery, or to cause or permit to be sold, exchanged or delivered, or to be offered for sale, exchange or delivery, or to have in possession for sale, exchange or delivery, any milk from which any part of the

cream shall have been removed, or any skimmed milk, unless the same be offered for sale and sold as skimmed milk, or unless there shall be attached to the outside of every vessel, can or package from or in which such skimmed milk is sold or held for exchange or delivery, a tag upon which shall be printed in black letters at least one inch in height the word "skim" or the words "skimmed milk."

31. Name on Wagons.—All wagons, vehicles, or carts from which market milk, cream, butter, ice cream, buttermilk, or ice milk are sold, marketed, delivered, or peddled, shall have the name and address of the owner plainly painted thereon, in letters at least three inches high, and one and one-half inches wide, on both sides of such vehicle.

32. Use of Chemical Substances.—It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or to have on hand for sale, any milk, or product of milk, to which has been added, or that may contain, any compound of boron, salicylic acid, formaldehyde, or other chemical or substance for the purpose of preventing or delaying fermentation or souring. It shall be unlawful for any person to produce, manufacture or prepare for sale, or to sell, or to offer for sale, or to have on hand for sale, any milk, cream or condensed milk to which any coloring matter has been added by any person, or to which any gelatin or other substance has been added by any person to increase the consistency of such milk, cream or condensed milk, so as to make such milk, cream or condensed milk appear richer or of better quality; provided, that this section shall not be construed to prohibit the use of harmless coloring matter and common salt (chloride of sodium) in butter and cheese.

33. Sale of Ice Milk.—It shall be unlawful for any person, firm or corporation, manufacturing any frozen goods, which do not conform to the standards and provisions of this act for ice cream, to sell, or offer to sell, or represent the same as ice cream, or under the name of ice cream;

and all frozen goods which do not conform to the standards and requirements of this act for "ice cream," but which do conform to the standards and requirements for "ice milk" herein, for the purpose of this act, shall be known as "ice milk," and shall be sold and designated as "ice milk," and not otherwise, and shall be billed as "ice milk," and every person, firm or corporation selling, furnishing or delivering to any person any such "ice milk" shall distinctly inform the purchaser at the time in each and every instance that the said goods are "ice milk." The absence of such declaration shall always be construed as a representation on the part of the vendor that the goods are ice cream.

Every tub, receptacle or packer in which there shall be kept, sold, or delivered, at any time, any "ice milk," as herein defined, shall have conspicuously and securely attached thereto a durable tag, giving the name and address of the manufacturer or vendor of the same, and containing the words "ice milk" in letters at least one inch high and one-half inch wide, and containing no other reference to the name or character of the goods therein contained. The absence of such tag or label shall always be construed as a representation on the part of the maker or vendor that said goods are ice cream.

Every wagon, vehicle or cart, in or from which any "ice milk" shall be sold, furnished, delivered or peddled, shall have plainly and durably painted on both sides thereof, the name and address of the owner, in letters at least three inches high and one and a half inches wide, and also the words "ice milk" on each side thereof, in letters at least four inches high, and two inches wide, and there shall be no other reference to the name or character of the goods being sold or delivered. The absence of such words and letters shall always be construed as a representation on the part of the owner or vendor that said goods are ice cream.

Every person, firm or corporation, who sells, keeps for sale, delivers, or furnishes in connection with meals, or in connection with drinks, or otherwise, any ice milk, within the meaning of this act, to be used or eaten on the premises

where sold, shall keep at all times posted or hung in at least two conspicuous places within the premises, and in plain view of the public, durable signs having printed or painted thereon the words "we sell ice milk," or "we serve ice milk," in letters at least four inches high and two inches wide. The absence of such signs, words and letters, as herein required shall always be construed as a representation on the part of the owner, or person selling or serving the goods that they are ice cream.

It shall be unlawful for any person, firm or corporation to manufacture, sell, deliver, furnish, serve, or keep on hand any ice milk, within the meaning of this act, unless the same is done in compliance with all the requirements hereof.

34. Cheese Brands and Grades.—Every person, firm or corporation, who shall at any creamery, cheese factory, or private dairy, manufacture cheese in the State of California, shall at the place of manufacture, brand distinctly and durably on the bandage of each and every cheese manufactured, and upon the package or box, when shipped, the grade of cheese manufactured, as follows: "California full-cream cheese," "California half-skim cheese," and "California skim cheese."

All brands for branding the different grades of cheese shall be procured from the State Dairy Bureau, and said bureau is hereby directed and authorized to issue to all persons, firms, or corporations, upon application therefor, uniform brands, consecutively numbered, of the different grades herein specified. The State Dairy Bureau shall keep a record of each and every brand issued, and the name and location of the manufacturer receiving the same. No manufacturer of cheese in the State of California, other than the one to whom such brand is issued, shall use the same, and in case of a change of location, the party shall notify the bureau of such change.

The different grades of cheese are hereby defined as follows: Such cheese only as shall have been manufactured from pure milk, and from which no portion of the butter fat has been removed by skimming or other process, and having

not less than fifty per cent of butter fat in the water-free substance, shall be branded as "California full-cream cheese;" and such cheese only as shall be made from pure milk, and having not less than twenty-five per cent of butter fat in the water-free substance, shall be branded "California half-skim cheese;" and such cheese only as shall be made from pure skim milk shall be branded "California skim cheese:" provided, that nothing in this section shall be construed to apply to "Edam," "Brickstein," "Pineapple," "Limburger," "Swiss," or hand-made cheese, not made by the ordinary Cheddar process.

No person, firm or corporation shall sell, or offer for sale, any cheese, manufactured in the State of California, not branded by an official brand and of the grade herein defined.

35. Acts of Agents.—The word "persons" as used in this act shall be construed to import both the singular and plural, as the case demands, and shall include individuals, corporations, companies, societies and associations. When construing and enforcing the provisions of this act, the act, omission or failure of any employee, officer, agent or other person, acting for or employed by any individual, corporation, company, society or association, within the scope of his employment or office, shall in every case also be deemed to be the act, omission or failure of such individual, corporation, company, society or association, as well as that of the person. The provisions of this act shall be construed to apply to hotel keepers, restaurant keepers and boarding-house keepers, or any person who shall serve meals and accept money therefor.

36. Penalties for Violating the Law.—Any violation of the law about the manufacture, sale or shipment of imitation butter or cheese is punishable by a fine of not less than \$50 nor more than \$150, or imprisonment in the county jail for not exceeding thirty days for the first offense; and for each subsequent offense, a fine of not less than \$150 nor more than \$300, or imprisonment in the county jail

not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court.

For any violation of the provisions of the law about reports, tests, measures, adulterated milk, labels, cream, cheese, ice cream, ice milk, fruit ice, nut ice, skimmed milk, milk wagons, or grades and brands of cheese, the penalty is a fine of not less than \$25 nor more than \$200, or imprisonment in the county jail not less than ten days nor more than sixty days; or both such fine and imprisonment, in the discretion of the court.

For any violation of any other provisions of the law, the penalty is a fine of not less than \$10 nor more than \$200, or imprisonment in the county jail not less than ten days nor more than one hundred days; or both such fine and imprisonment, in the discretion of the court.

37. Notice to Change Unsanitary Conditions.—In cases where any dairy, creamery or other factory of milk products, or store or depot where milk and its products are handled and sold, is found to be in an unsanitary condition, the agent and secretary, or the inspector, for the district in which the violation occurred, shall serve upon the owner, or owners, or person in charge of the dairy, creamery or other factory of milk products so found to be in an unsanitary condition, a written notice specifying in detail the changes required to be made to place such dairy, creamery, or other factory of milk products or store or depot in a sanitary condition as defined in this act. Should such changes not have been made at the expiration of thirty days after the date when the notice was served, the state dairy bureau, through its agent and secretary, or its inspectors, shall enter complaint against the person or persons responsible for such unsanitary conditions and cause them to be prosecuted for violating this act.

Act of the Legislature, approved April 21st, 1911.

Section 31ii.—PRODUCTION AND SALE OF CERTIFIED BUTTER.—No person shall sell or exchange, or offer or expose for sale or exchange, as and for certified butter, any butter which does not conform to the regulations prescribed by, and bear the certification of, a milk commission appointed by a county medical society organized under and chartered by the medical society of the State of California, and which has not been pronounced by such authority to be free from antiseptics, added preservatives and pathogenic bacteria. All butter sold as certified butter shall be conspicuously marked with the name of the commission certifying it; provided, that such milk commission shall make all requirements for the production and handling of certified butter uniform and fair, and shall not refuse to certify butter for any applicant for certification who shall comply with the provisions of this act, and the requirements of the milk commission whose certificate is sought. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than sixty days.

Act of the Legislature, approved March 17th, 1911.

Section 31j.—FALSE ADVERTISEMENTS.—It is a misdemeanor to publish false advertisements in newspapers, concerning the quantity, quality, value, price, or the method of production or manufacture, of any merchandise in this state.

Act of the Legislature, approved April 22d, 1909.

(a) **False Labels, etc.**—It is a misdemeanor to falsely represent, by means of imprints, labels, trade-marks, tags, or stamps on casks, boxes, cases or packages, the kind of labor employed in the production or manufacture of any article of merchandise. Thus, if a label represents that the article was manufactured by white labor only, when in fact it was made by Chinese, the false representation is a

misdemeanor. The penalty is a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than twenty nor more than ninety days, or both.

Act of the Legislature, approved March 14th, 1911.

Section 31ja.—SELLING FISH AND WILD GAME BY WHOLESALE.—Every person who carries on the business of purchasing, selling, and dealing in fish or in wild game or wild animals by wholesale in this state, except by authority of a license, is guilty of a misdemeanor.

Every wholesale dealer in fish or in wild game or wild animals who buys or deals in the fish or in the wild game or animals of this state for profit, shall upon receipt or purchase of any fish or of any wild game or wild animals in this state, enter at the time of the transaction, in a register kept by him for that purpose, in the English language, the date, the kind and weight of fish so received or bought, and the date, the kind and number of wild game or animals so received, or bought, and the name and the residence of the person or persons from whom the same was received, or purchased. Every person who violates any of the provisions of this section is guilty of a misdemeanor.

Every wholesale dealer for profit in any of the fish or wild game or animals of this state who fails, refuses, or neglects to produce for inspection his register to any fish and game commissioner of this state, or any duly appointed, qualified, and acting assistant thereof, is guilty of a misdemeanor.

Act of the Legislature, approved April 14th, 1911.

Section 31jb.—SELLING TOBACCO OR CIGARETTES TO MINORS.—Every person, firm or corporation who sells or gives or in any way furnishes to another person who is in fact under the age of eighteen years any tobacco, cigarette or cigarette papers, or any other preparation of tobacco, is guilty of a misdemeanor and upon

conviction thereof shall be punished for the first offense by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment for not more than sixty days; and for the second offense by a fine of not less than fifty dollars nor more than two hundred dollars, or by imprisonment for not more than ninety days; and for each subsequent offense by a fine of not less than one hundred dollars and not more than three hundred dollars, or by imprisonment for not less than ninety days nor more than six months, or by both such fine and imprisonment

Every person, firm or corporation which sells, or deals in tobacco or any preparation thereof shall, within ninety days after this act becomes effective, post conspicuously and keep so posted in his or their place of business a copy of this act, and any such person failing to do so shall upon conviction be punished by a fine of five dollars for the first offense, and twenty-five dollars for each succeeding violation of this provision, or by imprisonment for not more than thirty days.

Act of the Legislature, approved March 24th, 1911.

Section 31jc.—EXPLOSIVES—TRANSPORTATION, STORAGE AND SALE.—An Act relating to explosives, regulating their transportation, storage and sale, was passed by the Legislature in 1911. The term “explosive” or “explosives,” whenever used in this act, shall include gunpowder, blasting powder, dynamite, guncotton, nitroglycerine or any compound thereof, fulminate, and every explosive substance having an explosive power equal to or greater than black blasting powder, and any substance intended to be used by exploding or igniting the same to produce a force to propel missiles, or rend apart substances, but does not include said substances, or any of them, in the form of fixed ammunition for small arms.

1. **Storage.**—Except only at an explosive manufacturing plant, no person shall have, keep or store, at any place within this state, any explosive, unless such explosives are completely enclosed and encased in tight metal, wooden or fibre

containers; and, except while being transported, or within the custody of a common carrier pending delivery to consignee, shall be kept and stored in a magazine constructed and operated as hereinafter described, and no person having in his possession or control, any explosives, shall under any circumstances permit or allow any grains or particles thereof to be or remain on the outside of or about the containers, in which such explosives are contained.

2. **Magazines.**—Magazines in which explosives may lawfully be stored or kept shall be two classes, as follows:—

Magazines of the first class shall consist of those containing explosives exceeding fifty pounds, and shall be constructed wholly of brick, wood covered with iron, or other fireproof material, and must be fireproof, and, except magazines where gunpowder or black blasting powder only is stored, must be bullet proof, and shall have no openings except for ventilation and entrance. The doors of such magazine must be fireproof and bullet proof, and at all times kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. Every such magazine shall have sufficient openings for ventilation thereof, which must be screened in such manner as to prevent the entrance of sparks or fire through the same. Upon each side of such magazine there shall at all times be kept conspicuously posted a sign, with the words, "Magazine explosives dangerous" legibly printed thereon in letters not less than six inches high. No matches, fire or lighting device of any kind, shall at any time be permitted in any such magazine. No package of explosives shall at any time be opened in any magazine, nor shall any open package of explosives be kept therein. No blasting caps, or other detonating or fulminating caps, or detonators, or electric fuzes, shall be kept or stored in any magazine in which explosives are kept or stored, but such caps, detonators or fuzes may be kept or stored in a magazine constructed as above provided, which must

be located at least one hundred feet from any magazine in which explosives are kept or stored. Magazines in which explosives are kept or stored must be detached, and must be located at least one hundred feet from any other structure.

Magazines of the second class shall consist of a stout wooden box, covered with sheet iron, and not more than fifty pounds of explosives shall at any time be kept or stored therein, and, except when necessarily opened for use by authorized persons, shall at all times be kept securely locked. Upon each such magazine there shall at all times be kept conspicuously posted a sign with the words, "Magazine explosives dangerous" legibly printed thereon.

3. Storing in Tunnels.—Nothing in this act contained shall be held to prohibit the keeping or storing of explosives in any tunnel, where no person or persons are employed, provided always, that any tunnel so used for the storage of explosives shall have fireproof doors, which must at all times be kept closed and locked, except when necessarily opened for the purpose of storing or removing explosives therein or therefrom, by persons lawfully entitled to enter the same. The door of such tunnel magazine shall at all times have legibly printed thereon the words, "Magazine explosives dangerous."

4. Penalties.—Any person violating or failing to comply with the above provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars, and not more than one thousand dollars, or by imprisonment not exceeding six months, or by both such fine and imprisonment.

5. Transportation.—It shall be unlawful to transport, carry or convey, any explosives between any places within this state, on any vessel, car or other vehicle of any description, operated by common carrier, which vessel, car or vehicle is carrying passengers for hire; provided, that it shall be lawful to transport on any such vessel, car or

vehicle, small arms ammunition in any quantity, and such fuses, torpedoes, rockets or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time, in a single vessel, car or vehicle, but such samples shall not be carried in that part of the vessel, car or vehicle, which is intended for the transportation of passengers for hire; provided further, that nothing in this act shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels, cars or vehicles; provided further, that the transportation of explosives on any freight train in this state that carries passengers for hire in a car or caboose attached to the rear of such train, shall not be held or construed to violate the provisions of this act.

It shall be unlawful to transport, carry or convey liquid nitroglycerine, fulminate in bulk, in dry condition, or other like explosives, between any places within this state, on any vessel, car or vehicle of any description, operated by common carrier in the transportation of passengers, or articles of commerce by land or water.

Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof, the contents therein, and it shall be unlawful for any person to deliver for transportation to any common carrier engaged in commerce by land or water, or to cause to be delivered or to carry any explosive or other dangerous article, under any false or deceptive marking, description, invoice, shipping order or other declaration, or without informing the agent of such carrier of the true character thereof, at, or before the time of such delivery or carriage is made.

Any person who wilfully violates or causes to be violated any of the foregoing provisions shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be

punished for each offense by fine not exceeding two thousand dollars, or by imprisonment not exceeding eighteen months, or by both such fine and imprisonment in the discretion of the court.

6. Record of Sales.—Every person selling, giving away, or delivering explosives within this state, shall keep at all times an accurate journal or book of record, in which must be entered from time to time, as it is made, each and every sale, delivery, gift, or other disposition made by such person in the course of business, or otherwise, of any quantity of such explosive substance. Such journal or record book must show in a legible handwriting, to be entered therein at the time, a complete history of each transaction, stating name and quantity of explosives sold, delivered, given away, or otherwise disposed of; name, place of residence, and business of the purchaser or transferee, name of individual to whom delivered, with his or her address. Such journal or record book must be kept by the person so selling, delivering or otherwise disposing of such explosives, in his or their principal office or place of business, at all times subject to the inspection and examination of the police authorities of the state, county or municipality where same is situated, on proper demand therefor. In addition to keeping the record above provided, it shall be unlawful for any person to sell, give away or deliver any explosives within this state, without taking from the person to whom such explosives are sold, given away or delivered within this state, a statement in writing, showing the name and address of the person to whom such explosives are sold, given away or delivered, and the place where and the purpose for which such explosives are intended for use, which statement shall be signed by the person to whom such explosives are sold, given away or delivered, or his agent, and be witnessed by two witnesses, known to the person selling, giving away or delivering such explosives, to be residents of the county where such explosives, as shown by such statement, are intended for use,

who shall certify that the person to whom such explosives are to be sold, given away or delivered is personally known to each of said witnesses, and that to the best of his knowledge and belief, the explosives are required by such person for the uses and purposes set forth in the statement. Said statement shall at all times be kept on file in the principal office or place of business of the person so selling, giving away or delivering such explosives, subject to the inspection of the police authorities of the state, county or municipality where the same is situated, on proper demand made therefor; provided, that nothing in this section shall be held to apply to the delivery of explosives to any person or carrier for the purpose of being transported from a place within this state to any other place within this state; and, provided further, that nothing in this section contained shall apply to interstate commerce.

Every person selling, giving away or delivering any explosives without complying with all the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars, and not more than two thousand dollars, or by imprisonment of not less than six months, or by both such fine and imprisonment in the discretion of the court.

In addition to such imprisonment and as cumulative penalty such person so offending shall forfeit for each offense, the sum of two hundred and fifty dollars, to be recovered in any court of competent jurisdiction, and the party instituting the action for such forfeiture shall not be entitled to dismiss it, without the consent of the court before which the suit has been instituted; nor shall any judgment recovered be set aside, satisfied or discharged save by order of such court, after full payment into court, and all moneys so collected must be paid to the party bringing suit.

7. Mining Operations.—No explosives in excess of an amount sufficient for one day's operations shall be taken into any mine or underground workings in this state, and

any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding five hundred dollars.

8. Other Regulations.—No person, except a peace officer or a person authorized so to do by the owner thereof, or his agent, shall enter any explosive manufacturing plant, magazine or car containing explosives in this state, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in an amount not exceeding one thousand dollars or by imprisonment not exceeding three months, or by both such fine and imprisonment.

No person shall discharge any firearms within five hundred feet of any magazine or of any explosive manufacturing plant, and any person wilfully violating any of the provisions of this section shall be deemed guilty of a misdemeanor and fined not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment.

No person shall wilfully carry any explosive on his person within this state in any car, vessel or vehicle that carries passengers for hire, or place or carry any explosive while on board any such car, vessel or vehicle, in any hand baggage, roll or container, or place any explosive in any baggage thereafter checked with any common carrier; and any person violating any of the provisions of this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding two years.

Nothing in this act contained shall prevent the operation of, or modify, alter, set aside or supersede the provisions of any municipal ordinance respecting the delivery, storing and handling of explosives.

Nothing in this act contained shall regulate or apply to any shipment of explosives from a point within this state,

consigned to a point without this state, over a line or lines of one or more common carriers.

Act of the Legislature, approved March 20th, 1911.

Installment Sales of Personal Property.

Section 31k.—CONDITIONAL SALES OF PERSONAL PROPERTY.—Where personal property is delivered, under a contract for payments on installments, title to remain in the vendor until final payment, it is a conditional sale. The title to the property does not pass from the vendor, nor vest in the vendee, until the contract is completed upon the payment of the last installment.

Section 31l.—LANGUAGE OF THE CONTRACT.—It makes no difference what language is used in the contract, if the intention of the parties is to be seen, that the vendor retains the title until the money is paid. The paper may be called a "deed," or "agreement," or "lease," and the designation will not affect the real meaning of the contract. It is only a conditional sale, no more, no less, whatever the language used in the contract may be. In the case of Lundy Furniture Company vs. White, our Supreme Court said, "Where goods were delivered under a contract, designated as a lease, providing for a monthly rental, and that the consent of the seller should be necessary for the removal of the goods from the purchaser's residence, and reserving title in the seller until full payment, after which a bill of sale was to be given, the transaction was a conditional sale, and the title remained in the seller. The name by which the parties designate their contract is not determinative of its nature. The calling of this agreement a 'lease' did not make it such. The payments, to be made monthly in installments, designated 'rent,' were in fact nothing but partial payments." (Decided by the Supreme Court of California, in the case of Lundy Furniture Company vs. White, which decision is printed in Volume 126 of the California Reports, page 170.)

Section 31m.—DEFAULT IN PAYMENTS.—It is the duty of the vendee to make payments of the installments when due. He has no right, after he has received the property, to change or alter in any way the terms of payments. If he does not pay when due, this will amount to a default on his part, and a breach of the contract, for which the vendor may take immediate action.

Section 31n.—SALE BY VENDEE TO ANOTHER PERSON.—The party receiving the property has no right to sell it until the purchase price is paid. If the vendee sells the property, the purchaser from him obtains no title, and the original vendor may recover the property. The second vendee is not entitled to stand in any better situation than his vendor in regard to the title of the property. And where the owner of a piano sold it on the installment plan, with the condition that the title should remain in the seller until final payment, and the vendee sold the piano before payment of the final installment, the Supreme Court held that the purchaser from him got no title, and the true owner was entitled to recover his property. (Decided by the Supreme Court of California in the case of *Kohler vs. Hayes*, which decision is printed in Volume 41 of the California Reports, page 445.)

Section 31o.—REMEDY OF SELLER IN CASE OF PURCHASER'S DEFAULT.—If the purchaser fails to make payments as they accrue, and lets the installments or any of them go by default, the seller has either one of two remedies: (1) He may, upon the default of the purchaser in meeting the stipulated payments, or any of them, treat the contract as no sale, and take the property into his own possession again. If he is prevented by the purchaser from retaking the property, he may go into court and recover it in a suit on claim and delivery. (2) Or, the seller may treat the sale as an absolute one, and bring a suit to recover each installment as default is made in payment; in which case, other property of the seller

(not exempt from execution) may be attached and levied upon to pay the judgment obtained against him. (Decided by the Supreme Court, in the case of Holt Manufacturing Company vs. Ewing, which decision is printed in Volume 109 of the California Reports, page 353.)

Section 31p.—MONEY ALREADY PAID.—It is lawful for the contract to provide that all installments paid before default shall be forfeited as damages for the use of the property, or as rent, and such conditions, if fairly entered into, will be enforced by the law of California. The parties to a conditional installment sale have the right to agree upon a certain sum as damages, which is called "liquidated damages," to belong to the seller in case of default on the part of the purchaser.

Civil Code, Section 1671.

Section 31q.—ABSOLUTE SALE ON INSTALLMENTS.—A sale of personal property, the purchase price to be paid in installments, may be made without any other conditions. In this case, the sale is absolute, and passes the title to the purchaser; and if default is made, the seller has no right to retake the property; but he may sue and put an attachment on the property for the purchase price.

Section 31r.—FORM OF CONDITIONAL AGREEMENT.—The following is a good form of agreement for conditional sale of personal property:—

San Francisco, California,....., 191..
 I promise to pay to.....
, Dollars, at.....
, Cal., as rent for.....

 (Here describe property.)

 as follows:.....Dollars before delivery
 of said property to me, and.....Dollars
 per month on the.....day of each and every

.....month thereafter, commencing on the
day of.....191.., with interest on
 the amount unpaid at the rate of.....per cent per
 annum, payable monthly.

I acknowledge the receipt of said property, and agree that
 I will keep the same in good order, and that it shall not be
 removed from No.....Street,
 in the City of....., without the
 written consent of said
, and do also agree that until the sum of
Dollars with interest, as aforesaid,
 is fully paid, said property is the property of said.....
, and that I have no
 right to dispose thereof; but when the total sum of.....
Dollars and interest has been paid, and
 not until then, I shall receive a bill of sale and the title to
 said property shall vest in me.

I also agree that if I fail to pay any of said installments
 when due, or perform any of the aforesaid conditions, or
 said property be attached or levied upon, all of said sum of
Dollars shall in any of said
 cases immediately become due and payable, and.....
may enforce pay-
 ment of the entire sum then unpaid and interest thereon;
 or may, if he so elect, rescind this executory contract and
 take possession, without legal process, of said property, and
 for that purpose may enter any premises where the same
 may be (all damages for said entry being hereby expressly
 waived); and thereupon, if said.....
shall elect to rescind, and shall retake said
 property, they shall refund the money paid by me, if any
 remains, after deducting a rental for use of said property
 of.....Dollars per month, expenses of
 taking possession and removal, and twenty per cent of total
 sum to be paid for liquidated and assessed damages, which
 rental, expenses, and damages I promise and agree to pay
 said..... Said
 rental dating from delivery of said property to me.

In all matters herein mentioned, time is declared to be
 the essence of this contract.

....., Vendee.

I agree to the terms of the foregoing contract.

....., Vendor.

Section 31s.—SELLING AS A PLEDGE.—If the vendor, when the vendee fails to pay the installments, takes the property into his own possession again, he is not required to keep it; he may sell it as a pledge, apply the proceeds upon the amount due him from the buyer, and then sue the buyer for the balance. (Decided by the Supreme Court of California in the case of Matteson vs. Equitable Mining and Milling Co., which decision is printed in Volume 27, California Decisions, page 1024.)

Section 31t.—FORM OF CONDITIONAL AGREEMENT WHERE PERSONAL PROPERTY IS ATTACHED OR TO BE ATTACHED TO A BUILDING.—Another form may be used, if it is for the conditional sale of property attached or to be attached to a building, as follows:

San Francisco, California,....., 191..
 I promise to pay to.....the sum of
Dollars, at
 as rent for.....
 (Here describe property.)

.....

 as follows:Dollars before delivery of
 said property to me, and.....Dollars
 per month on the.....day of each and every
month thereafter, commencing on the
day of....., 191.., with interest on
 the amount unpaid at the rate of.....per cent per
 annum, payable monthly.

I acknowledge the receipt of said property, and agree that
 I will keep the same in good order, and that it shall not be
 removed from No.....Street,
 in the City of....., without the
 written consent of said.....

The said property is to be attached to that certain build-
 ing occupying or standing on the following described
 premises, to-wit:

.....

 (Here describe the lot or tract of land; if in a city or
 village, describe its location by street number, if known; if in

a city or county where the block system of recording and indexing conveyances is in use, the section and block within which it is located must be given.)

And I do also agree that until the sum of..... Dollars with interest, as aforesaid, is fully paid, said property is the property of said..... and that I have no right to dispose thereof; but when the total sum of..... Dollars and interest has been paid, and not until then, I shall receive a bill of sale and the title to said property shall vest in me.

I also agree that if I fail to pay any of said installments when due, or perform any of the aforesaid conditions, or said property be attached or levied upon, all of said sum of..... Dollars shall in any of said cases immediately become due and payable and..... may enforce payment of the entire sum then unpaid and interest thereon; or may, if he so elect, rescind this executory contract and take possession, without legal process, of said property, and for that purpose may enter any premises where the same may be (all damages for said entry being hereby expressly waived); and thereupon, if said..... shall elect to rescind, and shall retake said property, he shall refund the money paid by me, if any remains after deducting a rental for use of said property of..... Dollars per month, expenses of taking possession and removal, which rental and expenses I promise and agree to pay said....., said rental dating from delivery of said property to me.

In all matters herein mentioned, time is declared to be of the essence of this contract.

....., Vendee.

I hereby accept the above contract, and agree to its terms.

....., Vendor.

Section 31u.—FORM OF CONDITIONAL AGREEMENT FOR SALE OF MACHINERY.—The following is a form of conditional agreement for the sale of machinery:

Agreement made the.....day of.....191...
between....., of....., party of
the first part, and....., of.....,

party of the second part. The said parties mutually agree as follows:

1. In consideration of payments hereby reserved, and of the performance of the conditions and stipulations herein-after contained, and on the part of the said party of the second part to be performed, the said party of the first part will, on or before the.....day of.....next, erect and place in the mill of the said party of the second part situated at....., in the County of....., State of....., the machinery particularly described in the schedule hereto annexed, and hereafter called the said machinery.

2. The said party of the second part shall hold and be at liberty to use the said machinery for the term of..... years from the said.....day of.....next, at the rent of.....dollars per annum, payable half-yearly on the.....day of....., and the.....day of....., in each year during the continuance of the said term, such payments making in the aggregate the sum of.....dollars (price of the machinery), the first of such payments to be made in advance on the said.....day of.....next.

3. The said party of the second part shall, at his own expense, from time to time, replace and repair all such parts of the said machinery as may be broken, worn out or damaged, and keep the same in every respect in good working order; and he will not, during the said term, remove any part of the said machinery from the building where the same may be erected without the consent in writing of the said party of the first part, and will not assign, transfer, underlet, or part with the possession of the same either directly or indirectly.

4. The said party of the second part will punctually pay the rents hereby reserved, and perform all the conditions and stipulations herein contained, and on his part to be performed; and will not do or suffer anything whereby the said machinery or any part thereof shall or may be seized, taken in execution, attached, removed, destroyed, or injured.

5. The said party of the second part shall keep said machinery insured against damage or loss by fire in some office to be approved by the said party of the first part for at least the sum of.....dollars, and will pay the premiums for such insurance, and will forthwith deliver to the said party of the first part the policies of such insurance,

and the receipts for the premiums which shall become payable therefor.

6. It is hereby expressly declared that the property in said machinery shall remain in the said party of the first part to all intents and purposes; provided, that the said machinery shall become the absolute property of the said party of the second part on the expiration of the said term, and payment of all the rent hereby covenanted to be paid, and all costs, charges, and expenses provided for under this agreement.

7. In case of the bankruptcy of the said party of the second part, or in case he shall assign, transfer, or mortgage the said machinery, or any part thereof, or in case he shall make default in performing and observing any of the covenants, conditions, or agreements herein contained, the said aggregate sum of.....dollars shall become immediately payable to the said party of the first part, and he may at his option enter said premises, and every building in which any part of the said machinery may be, and take possession of and remove the said machinery.

8. The said machinery is to be attached to that certain building occupying or standing on the following described premises, to-wit:

.....

(Here describe the lot or tract of land on which the mill or building is situated; if in a city or village, describe its location by street number, if known; if in a city or county where the block system of recording and indexing conveyances is in use, the section and block within which it is located must be given.)

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 31v.—ASSIGNMENT OF CONTRACT.—The contract may be assigned, if there is nothing in its terms prohibiting such assignment. Under the contract the vendee is entitled to the possession of the property, and to become the absolute owner thereof, upon complying with the terms of the contract. These are rights of which he cannot be divested by any act of the vendor, and which he can

transfer to another in the absence of a stipulation in the contract to the contrary. The title to the property vests in the vendee upon the performance of the conditions of the sale, or in his assignee in the event that he has transferred his interest therein. He cannot sell the property itself, for he does not own it until final payment. But he can assign and transfer to another his interest in the contract, unless the contract itself prohibits such transfer.

Section 31w.—FORM OF ASSIGNMENT OF INSTALLMENT CONTRACT.—The following is a form of assignment of an installment contract. This form is to be indorsed on the contract, or written on a separate paper and affixed to the contract:

San Francisco, California,....., 191..

For value received, I do hereby transfer, assign and convey to....., his heirs and assigns forever all my right, title, and interest in, to, and under the within instrument.

.....

Stoppage in Transit.

Section 32.—WHEN SELLER OR CONSIGNOR MAY STOP GOODS IN TRANSIT.—A seller or consignor of goods, whose claim for the price has not been paid, may stop the goods while on their way to the buyer or consignee, and may take possession of the goods. He may do this whenever it becomes known to him, after parting with the property, that the buyer or consignee is insolvent. A person is insolvent, in the meaning of the law, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to pay his debts. The property can be stopped only by notice to the carrier or holder of the goods, or by taking actual possession of the goods. As the taking of actual possession will be ordinarily impossible, where the goods are on the way to the buyer or consignee on board

cars or vessels, a notice to the carrier not to deliver the goods will be sufficient to stop them; and if the carrier, notwithstanding such notice, delivers the goods to the buyer or consignee, the carrier will be liable to the seller or consignor in damages. The property can only be stopped while in transit. The transit of property is at an end when it comes into the possession of the consignee, or into the possession of his agent to receive it. Therefore, if the seller, after shipping the goods, discovers that the consignee is insolvent (that he has ceased to pay his debts in the usual manner, or has declared his inability or unwillingness to pay his debts), he must act promptly in order to stop the goods, and must give notice to the carrier not to make delivery. The sale of the goods is not rescinded by stopping them in transit. The seller simply resumes his vendor's lien for the price of the goods, and, if the consignee comes forward and pays the sum due on the purchase price, the goods must be released and allowed to proceed on their way. The seller, by stopping the goods in transit, does not become again the owner. He has parted with the title, but he again comes into possession, and holds the goods for the unpaid price. The carrier, after notice to stop, must deliver the goods to the vendor, and the vendor will then hold the property until the expiration of the credit given, and may then proceed to give notice and sell them again.

Civil Code, Sections 3076, 3077, 3078, 3079, 3080.

Section 33.—RESALE OF PERSONAL PROPERTY.

—There has been some controversy in the courts as to the manner of reselling personal property held under a vendor's lien, but the safer method is to give written notice to the vendee, and publish notice to the public, of the time and place of sale, and then to sell the goods at public auction. No particular form of notice need be employed, as any words or form will be sufficient which describes the goods, the time and place of sale, and the manner and terms of the sale.

Section 34.—WHAT WILL DEFEAT VENDOR'S RIGHT TO STOP GOODS.—The right of stoppage in transit belongs only to one occupying in some way the relation of vendor toward the consignee of the goods. And where the goods are transferred by the vendee to a bona fide purchaser for value, this will defeat the vendor's right to stop the goods. Where the buyer has possession of the bill of lading, with the consent of the seller, and indorses it to a bona fide purchaser of the goods,—to one who has no notice of the seller's claim or the buyer's insolvency, and who pays value for the goods,—this will defeat the right to stop the goods. The consignee may intercept the goods on the way, and take possession of them, at a different station or place from that of their destination, and the consignor's right of stoppage will be lost.

Warranty of Personal Property.

Section 35.—WARRANTY OF TITLE.—A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present, or future. A warranty of the character, condition, or quality of personal property arises from contract, either express or implied. The parties may expressly state the warranty they agree upon, or a warranty may arise by reason of some obligation which the law imposes upon the parties or the circumstances. One who sells personal property as his own thereby warrants that he has a good and unencumbered title to the property. The law implies this warranty from the fact of sale.

Civil Code, Section 1765.

Section 36.—WARRANTY ON SALE BY SAMPLE.—One who sells or agrees to sell goods by sample thereby warrants the quality of the bulk to be equal to that of the sample. Where goods are sold by sample, and the articles are inferior to the sample shown, the purchaser is not bound to accept the goods, for that would be to force upon him

goods of a different quality from that which he bargained for. In a sale by sample the law implies a warranty that the bulk of the property sold is equal to the sample exhibited. This warranty constitutes a condition of the contract of sale, and in such case the delivery of the goods to the carrier for transportation to the buyer does not have the effect of passing title to the buyer. In order that the delivery of the goods to the carrier shall operate to pass the title to the consignee, it is essential that the goods so delivered shall conform in quantity and quality with the order given for them. If, therefore, the vendor sends more or less than the quantity ordered, or of a different quality, the title will not pass unless the purchaser accepts them. (Decided by the Supreme Court of California in the case of *Gardiner vs. McDonogh*, which decision is printed in Volume 28, California Decisions, page 776.)

Civil Code, Section 1766.

Section 37.—WARRANTY ON AGREEMENT TO SELL MERCHANDISE NOT IN EXISTENCE.—A

person may agree to sell merchandise not then in existence, but he thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties; and the seller also warrants that such merchandise, when delivered, shall be as nearly sound and merchantable at the place of delivery as can be secured by reasonable care.

Civil Code, Section 1768.

Section 38.—MANUFACTURER'S WARRANTY AGAINST DEFECTS.—One who sells or agrees to sell

an article of his own manufacture thereby warrants it to be free from any latent defect, not disclosed to the buyer, arising from the process of manufacture; and also that neither he nor his agent in such manufacture has knowingly used improper materials therein; and one who manufactures an article, under an order for a particular purpose,

warrants by the sale that it is reasonably fit for that purpose; so, if it turns out either that the article manufactured is defective, which defect was not apparent or disclosed to the buyer, or that the article is not reasonably fit for the purpose for which it was ordered, the buyer has the right to rescind the sale, by returning or offering to return the article to the manufacturer.

Civil Code, Sections 1769, 1770.

Section 39.—WARRANTY OF SOUNDNESS.—One who sells or agrees to sell merchandise not open to the examination of the buyer thereby warrants that such merchandise is sound and merchantable.

Section 40.—WARRANTY BY TRADE-MARKS AND OTHER MARKS.—One who sells any article to which there is affixed a trade-mark thereby warrants it to be genuine and lawfully used. And one who sells any article with a statement or mark on it, or attached to it, expressing the quantity or quality of the article, or stating the place where it was manufactured, thereby warrants the truth of such representations.

Civil Code, Sections 1772, 1773.

(a)—**“Trade-Mark” Defined.**—The phrase “trade-mark,” as used in Section 40, includes every description of word, letter, device, emblem, stamp, imprint, brand, printed ticket, label, or wrapper, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to denote any article to be goods imported, manufactured, produced, compounded, or sold by him; and also any name or names, marks or devices, branded, stamped, engraved, etched, blown, or otherwise attached or produced upon any cask, keg, bottle, vessel, siphon, can, case, or package, used by any mechanic, manufacturer, druggist, merchant, or tradesman, to hold, contain or enclose the goods so imported, manufactured, produced, compounded, or sold by him.

Political Code, Section 3196.

(b)—**Recording Trade-Marks.**—Any person may record any trade-mark or name by filing with the secretary of state his claim to the same, and a copy or description of such trade-mark or name, with his affidavit attached thereto, setting forth that he (or the firm or corporation of which he is a member) is the exclusive owner, or agent of the owner, of such trade-mark or name. The secretary of state must keep for public examination a record of all trade-marks or names filed in his office, with the date when filed and name of claimant.

Political Code, Sections 3197, 3198.

(c)—**Assignment of Trade-Mark.**—Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred and assigned in the same manner as personal property, by bill of sale.

Political Code, Section 3199.

(d)—**Protection of Trade-Marks.**—The law will protect the owner of a trade-mark in his exclusive use of the same. The superior court will restrain, by injunction, any use of trade-marks, or names, which have been recorded with the secretary of state by the owner, where such trade-marks or names are used by any person not entitled thereto. The secretary of state must issue to the claimant, at the time the claim is filed, a certificate of filing under the great seal of the state, and must then collect from the claimant a fee of five dollars. The secretary of state must, however, refuse to file any trade-mark or name identical with, or so similar to any trade-mark or name already filed as to be calculated or liable to deceive.

Political Code, Section 3199; Act of the Legislature, approved March 6th, 1909.

Any person who has first adopted and used a trade-mark or name, whether within or beyond the limits of this state, is its original owner. Such ownership may be transferred in the same manner as personal property, and is entitled to the same protection by suits at law; and any

court of competent jurisdiction may restrain, by injunction, any use of trade-marks or names in violation of this chapter.

Act of the Legislature, approved March 21st, 1911.

Section 41.—WARRANTY OF PROVISIONS FOR DOMESTIC USE.—By a sale of provisions for domestic use, for immediate consumption, there is a warranty that the provisions are sound and wholesome.

Civil Code, Section 1775.

Section 42.—WARRANTY ON SALE OF GOOD WILL OF BUSINESS.—One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers.

Civil Code, Section 1776.

Section 42a.—DAMAGES ALLOWED ON BREACH OF WARRANTY.—The general rule is, damages in case of a breach of warranty of quality, of personal property sold, are to be estimated with reference to values at the time and place of delivery. But where personal property is sold on a warranty, to be used at some place other than the place of sale and delivery, and it is known to the seller that the property is bought for use at another place, the damages for breach of the warranty may be estimated with reference to values at the place where the property is to be used. P. F. Dundon sold two boilers at San Francisco to be used in Siberia, and warranted that they would develop a certain horsepower. The boilers were constructed at San Francisco under a contract which required them to be delivered at the wharf in San Francisco, but it was understood by both parties that the boilers were to be sent to and used on the Amoor river in Siberia, 13,000 miles from San Francisco. When they were set up and used in Siberia they were found to fall short of the warranty, and could not develop sufficient power for the purpose for which they were bought. The purchaser sued for damages, and the Superior Court of San Francisco gave him a judgment against Dundon for \$7,200,

the price paid for the boilers, which would have been their value in Siberia if constructed so as to do the warranted work. The Court of Appeals has affirmed the judgment.

(Decided by the California District Court of Appeals, in the case of Krasilnikoff vs. Dundon, which decision is printed in Appellate Decisions, Volume VII, page 7.)

Section 42b.—BOTTLES, BOXES, SIPHONS AND KEGS.—Any and all persons engaged in manufacturing, bottling, or selling olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages or Worcestershire or other sauce or sauces in bottles, siphons, or kegs, with his, her, its or their name or names, or other marks or devices, branded, stamped, engraved, etched, and blown, impressed, or otherwise produced upon such bottles, siphons, or kegs, or the boxes used by him, her, it or them, may file in the office of the clerk of the county in which his, her, its, or their principal place of business is situated, and also in the office of the secretary of state, a description of the name or names, marks, or devices, so used by him, her, it or them, respectively, and cause such description to be printed once in each week for three weeks successively, in a newspaper published in the county in which said notice may have been filed as aforesaid.

It is hereby declared to be unlawful for any person or persons, corporation or corporations, to fill with olive oil, salad oil, or any substitution for, or similar to olive oil, ripe or green olives, soda waters, mineral or aerated waters, port, ale, cider, ginger ale, milk, cream, beer, small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces, or with medicine, compounds, or mixtures, any bottle, box, siphon or keg, so marked or distinguished as aforesaid, with or by any name, mark or device, of which a description shall have been filed and published, as provided in this act, or deface,

erase, obliterate, cover up, or otherwise remove or conceal any such name, mark or device thereon, or to sell, buy, give, take or otherwise dispose of or traffic in the same, without the written consent of, or unless the same shall have been purchased from the person or persons, corporation or corporations, whose mark or device shall be or shall have been in or upon the bottle, box, siphon, or keg so filled, trafficked in, used, or handled as aforesaid. It is hereby declared to be unlawful for any person, firm, or corporation engaged in the manufacture, preparation or selling of drugs, or food products to use bottles, in bottling or packing their products, that have been previously used for other purposes.

1. **Penalty.**—Any person or persons or corporation offending against the provisions of this section shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment of not less than ten days nor more than six months or by a fine of fifty cents for each and every such bottle, box, siphon or keg so filled, sold, used, disposed of, bought, or trafficked in, or by both such fine and imprisonment; and for each subsequent offense by imprisonment not less than twenty days, nor more than one year, or by a fine of not less than one dollar nor more than five dollars for each and every bottle, box, siphon, and keg so filled, sold, used, disposed of, bought or trafficked in, or by both such fine and imprisonment, in the discretion of the magistrate before whom the offense shall be tried.

2. **Search Warrants.**—Whenever any person, persons, or corporation, mentioned in section one of this act, or his, her, its or their agent, shall make oath before any magistrate that he, she or it has reason to believe, and does believe, that any of his, her, or their bottles, boxes, siphons, or kegs, a description of the names, marks or devices, whereon has been so filed and published, as aforesaid, are being unlawfully used or filled, or had by any person or corporation manufacturing or selling olives, olive oil, salad oil, soda,

mineral, or aerated waters, porter, ale, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, and other beverages, or Worcestershire or other sauce or sauces, or that any junk dealer, or dealer in second hand articles, vendor of bottles, or any other person or corporation, has any such bottles, boxes, siphons, or kegs, in his, her, or its possession, or secreted in any place, the said magistrate must thereupon issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person in whose possession such bottles, boxes, siphons, or kegs may be found, and then inquire into the circumstances of such possession, and if said magistrate finds that such person has been guilty of a violation of this act, he must impose the punishment therein prescribed, and he shall also award possession of the property taken upon such search warrant to the owner thereof.

3. Accepting Deposits.—The requiring, taking, or accepting of any deposit for any purpose, upon any bottle, box, siphon, or keg, shall not be deemed or constitute a sale of such property, either optional or otherwise, in any proceeding under this act.

4. Sale of Rights.—Any person or persons, corporation or corporations that has or have heretofore filed a description of the name or names, marks, or devices, upon his, her, their or its property, and has caused the same to be published according to the laws existing at the time of such filing and publications, shall not be required to again file and publish such description to be entitled to the benefits of this act; and any person or persons, corporation or corporations, having complied with the provisions of this act, may as a part of the sale, assignment or transfer of all his, her, their, or its said bottles, boxes, siphons, or kegs, used as aforesaid, with his, her, their or its name or names or other marks or devices, branded, stamped, engraved, etched, and blown, impressed or otherwise produced upon such bottles, boxes, siphons, and kegs, to any

other person or persons, corporation or corporations, engaged in manufacturing, bottling or selling of olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer, or other beverages, or Worcestershire or other sauce or sauces, sell, assign, and transfer the sole and exclusive right of using said name or names, mark or devices in said business. And in the event of such sale, transfer or assignment as aforesaid, or in the event of the transfer by operation of law or by sale under order of any court of the entire business of such person or persons, corporation or corporations, of the entire stock of bottles, boxes, siphons or kegs, belonging to them, him, her or it, to any person or persons, corporation or corporations, engaged in the manufacturing, bottling, or selling olives, olive oil, salad oil, soda waters, mineral or aerated waters, porter, ale, beer, cider, ginger ale, milk, cream, small beer, lager beer, weiss beer, white beer or other beverages, such person or persons, corporation or corporations, shall not be again required to file and publish a description of said name or names, marks, or devices, hereunder, but shall be entitled to all the benefits of this act immediately upon acquiring such bottles, boxes, siphons or kegs, or such business as aforesaid.

Act of the Legislature, approved March 21st, 1911.

Section 42c.—EXAMINATION OF PROPERTY BY PURCHASER.—The law will not give redress to a purchaser who claims to have been deceived, if it appears that he had ample opportunity to examine the property, and that he had sufficient knowledge of the subject to know and understand any defects which might have been apparent by such examination. But this position may be materially changed by representations which the seller himself makes about the property. Where the purchaser may know the truth by looking, or where the truth is shown him, he is not misled; but where he relies upon the statements of the seller, and has no knowledge that such statements are

false, he can, when they are false, and when he himself has been reasonably prudent, recover damages. If no knowledge of their falseness is presented to him, the purchaser may rely implicitly upon the statements of the vendor, if such statements are not so openly false as to be apparent to an ordinarily prudent person.

Auction Sales.

Section 43.—AUTHORITY OF AUCTIONEER.—A sale by auction is a sale by public outcry to the highest bidder on the spot. Laws have been passed by the Legislature of California to regulate the authority of auctioneers, and the rights of bidders, and the manner of conducting auction sales. An auctioneer, by the law of California, without special authorization, has authority from the seller only to the extent that he may sell by public auction to the highest bidder; to sell for cash only, except such articles as are usually sold on credit at auction; to warrant the title of his principal to personal property sold by him, and the quality and quantity of the property; to prescribe reasonable rules and terms of sale; to deliver the things sold upon payment of the price; to collect the price; and to do whatever else is necessary, or proper and usual in the ordinary course of business, for effecting these purposes. An auctioneer will be deemed to have authority from a bidder at the auction, as well as from the seller, to bind both seller and bidder by a memorandum of the contract, whenever by law the sale must be evidenced by a memorandum in writing.

Civil Code, Sections 1792, 2362, 2363.

Section 44.—WHEN AUCTION SALE IS COMPLETE.—A sale by auction is not complete until the auctioneer publicly announces, by the fall of his hammer, or in some other customary manner, that the thing is sold.

Civil Code, Section 1793.

Section 45.—WITHDRAWAL OF BIDS.—Until the public announcement necessary to complete the sale is made by the auctioneer, any bidder may withdraw his bid. The only thing necessary to do in withdrawing a bid is to notify the auctioneer that the bid is withdrawn, before the final announcement of the sale.

Civil Code, Section 1794.

Section 46.—AUCTION SALE UNDER WRITTEN CONDITIONS.—Whenever an auction sale is made under written or printed conditions, the auctioneer must follow such conditions, and has no power to change them by any oral declaration, except that he may modify a condition intended for his own benefit.

Civil Code, Section 1795.

Section 47.—AUCTION SALE WITHOUT RESERVE.—Public policy requires that auction sales shall be conducted with the highest good faith, and that neither the auctioneer nor his principal shall be allowed to deceive or impose upon the persons who gather at an auction for the purpose of making bids. It is therefore provided by the law, for the protection of the bidder, that at a sale by auction, announced to be without reserve, the highest bidder in good faith has an absolute right to the completion of the sale to him. Upon such a sale bids by the seller, or bids by any agent for him, are absolutely void. The public is interested in securing the advantages of fair and just competition among bidders, and in the prevention of favoritism or fraud in any form. The highest bidder in good faith, at a sale without reserve, is entitled to the property; and, if it should appear that the property was in reality knocked down by the auctioneer upon a higher but fraudulent bid in the interest of the seller, a suit can be maintained in the Superior Court to compel the recognition of the rights of the bidder in good faith, and the delivery of the property to him upon payment of the amount of his bid.

Civil Code, Section 1796.

Section 48.—FRAUDS UPON THE BUYER.—Sometimes the seller, for the purpose of increasing the price of the property sold at auction, will employ puffers to bid up the property, thus giving it a fictitious value, and often inducing credulous bidders to increase their bids beyond what they had any idea of offering. The law provides, without any qualification, that the employment of puffers at an auction sale by the seller, without the knowledge of the buyer, is a fraud upon the buyer, which entitles him to rescind his purchase.

Civil Code, Section 1797.

Section 49.—AUCTIONEER'S MEMORANDUM OF SALE BINDS BOTH PARTIES.—When property is sold by auction, an entry made by the auctioneer in his sale book, at the time of the sale, giving the names of the person for whom he sells and the buyer, and describing the thing sold, the price, and the terms of sale, binds both the seller and the buyer, in the same manner as though the memorandum had been made by themselves.

Civil Code, Section 1798.

Deposit of Personal Property.

Section 50.—DEPOSIT FOR SAFE KEEPING.—The obligations of one who receives personal property on deposit are fixed by statute. When personal property is deposited with one for safe keeping, the person receiving the deposit is bound to return the identical thing deposited with him; he is bound to use ordinary care in the safe keeping of the property, and if, by his gross carelessness or neglect, the thing deposited with him is lost or injured, he is liable to the depositor for its value.

Section 51.—DEPOSIT FOR EXCHANGE.—A deposit for exchange is one in which the depositary is bound to return to the depositor, not the identical thing deposited,

but something corresponding in kind to it. Where money is received on deposit, or any article which is mingled with the depositary's property of a like kind, and not expected to be returned to the depositor in the identical thing deposited, the depositor becomes a creditor of the other party, to the amount of the money or value of other property deposited.

Civil Code, Sections 1818, 1878.

Section 52.—OBLIGATIONS OF THE DEPOSITARY.—The depositary must deliver the property to the person for whose benefit it was deposited, on demand, unless he has a lien upon it. He is not bound to deliver the property without a demand being made for it, even where the deposit is made for a specified time. A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him. If a thing deposited is owned jointly or in common, by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share, if this can be done without injury to the thing deposited.

Civil Code, Sections 1822, 1823, 1824, 1827.

Section 53.—THINGS WHICH WILL EXCUSE DELIVERY.—There are some circumstances which will excuse delivery, even after demand is made. A third person may claim to be the real owner of the property, and establish his claim by law; or litigation may ensue between the depositor and another person claiming to be the real owner of the property, in which the court will enjoin the delivery or take the property into its own hands pending the litigation. Whenever any proceedings are taken adverse to the interest of the depositor, or adverse to the interest of the person for whose benefit the deposit was made, the person who received the deposit must give prompt notice of such proceedings to the depositor or other person beneficially interested. The depositary may also acquire a lien upon the property, which will excuse delivery; and generally he

will have a lien upon the property, when he has performed services about the property, or incurred expense in its keeping or preservation, for the value of his services and the amount of his expenses.

A depositary for hire has a lien for storage charges and for advances and insurance incurred at the request of the bailor, and for money necessarily expended in and about the care, preservation and keeping of the property stored, and he also has a lien for money advanced at the request of the bailor, to discharge a prior lien, and for the expenses of a sale where default has been made in satisfying a valid lien.

Act of the Legislature, approved April 19th, 1909.

(a)—SALE OF PLEDGED PROPERTY.—The sale by a pledgee, of property pledged, must be made by public auction, in the same manner as a sale of personal property under execution. Written notice must be posted in three public places in the township or city where the sale is to take place, for not less than five days nor more than ten days.

Code of Civil Procedure, Section 692.

Storage of Personal Property.

Section 54.—STORAGE.—Where a person deposits personal property with another and agrees to pay him a compensation, it is called storage. Under this designation is included a variety of business transactions wherein one person takes charge and custody of the goods of another for hire.

Section 55.—CARE TO BE TAKEN OF THING DEPOSITED.—One who takes goods on storage for hire must use at least ordinary care for their preservation, and is liable for damages by reason of failure to perform his obligation in this respect.

Storage in Warehouses.

Section 56.—WAREHOUSE RECEIPTS.—The most common form of storage known to business is that where the owner of a warehouse receives property on storage for a stated compensation. The warehouseman, upon receiving the property, must give a receipt for it, which receipt must show on its face that a contract for storage has been entered into between the owner of the goods and the warehouseman, the latter to store the goods, and the former to pay for that service. A warehouseman cannot issue any valid receipt for any merchandise, grain, or other product or thing of value, unless the property has actually been received by him and is in the warehouse or under his control at the time; and no second warehouse receipt can be issued, so long as a former receipt is outstanding and uncanceled in whole or in part. A warehouse receipt is a negotiable instrument, and may be transferred by indorsement, and a transfer of the receipt is a good delivery of the goods represented by it. But it is only persons who pursue the calling of warehousemen—that is, receive and store goods in a warehouse as a business for profit—that have power to issue a technical warehouse receipt, the transfer of which will be considered by the law a good delivery of the property represented by the receipt. Therefore, such a receipt issued by one who is not in that business for profit, even though he receives the goods, will not have given to it by law the character of a negotiable instrument. In every case where a warehouseman receives property in a warehouse as a business for profit, the warehouse receipt is negotiable, and a transfer of the receipt in good faith, by indorsement to another, passes the title to the goods covered by the receipt.

Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms—

(a) The location of the warehouse where the goods are stored,

- (b) The date of issue of the receipt,
- (c) The consecutive number of the receipt,
- (d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order,
- (e) The rate of storage charges,
- (f) A description of the goods or of the packages containing them,
- (g) The signature of the warehouseman, which may be made by his authorized agent,
- (h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and
- (i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

Act of the Legislature, approved March 19th, 1909.

Section 57.—NEGOTIABILITY OF WAREHOUSE RECEIPT.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt.

A receipt in which it is stated that the goods received will be delivered to the bearer, or to the order of any person named in such receipt, is a negotiable receipt.

When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to anyone who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

Act of the Legislature, approved March 19th, 1909.

Section 58.—REMOVAL OF PROPERTY BY WAREHOUSEMAN.—No warehouseman can sell or encumber, or ship or remove beyond his control, any property for which a receipt has been given by him, without the consent in writing of the holder of the receipt, and the consent of the holder must be plainly indorsed on the receipt.

Act of the Legislature, approved March 19th, 1909.

Section 59.—DELIVERY OF PROPERTY BY WAREHOUSEMAN.—A warehouseman, in the absence of some lawful excuse provided by this act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

An offer to satisfy the warehouseman's lien;

An offer to surrender the receipt if negotiable, with such endorsements as would be necessary for the negotiation of the receipt; and

A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden is upon the warehouseman to establish the existence of a lawful excuse for such refusal.

A warehouseman is justified in delivering the goods, subject to the above provisions, to one who is—

The person lawfully entitled to the possession of the goods, or his agent;

A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman will be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by law; and though he delivered the goods as authorized by law, he will still be liable if prior to such delivery he had either been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he will be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman; and

Where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he will be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to

the receipt before or after the delivery of any portion of the goods by the warehouseman; unless the goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature.

Material and fraudulent alteration of a receipt will not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but will excuse him from any other liability to the person who made the alteration, and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration will acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees.

The delivery of the goods under an order of the court will not relieve the warehouseman from liabilities to a person to whom the negotiable receipt has been negotiated for value without notice of the proceedings or of the delivery of the goods.

(a)—**Duplicate Receipt.**—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but imposes upon him no other liability.

Act of the Legislature, approved March 19th, 1909.

Section 60.—LIABILITY OF WAREHOUSEMAN.—

If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman will be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. If an adverse claimant does not bring suit and serve summons on the warehouseman within forty-eight hours after the service of notice of his adverse claim, such failure will act as a complete abandonment of such adverse claim.

A warehouseman will be liable to the holder of a receipt for damages caused by the non-existence of the goods or by failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, will not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonable careful owner of similar goods would exercise; but he will not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

A warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued,

as to permit at all times the identification and re-delivery of the goods deposited.

If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. The warehouseman will be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman will in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Section 61.—WAREHOUSEMAN'S LIABILITY FOR DELIVERING PROPERTY TO WRONG PERSON.—

A warehouseman must use ordinary care and diligence to ascertain whether an indorsement is genuine before delivering the property. And if he delivers the property to a person who has no right to it, when he might have ascertained the truth by the exercise of ordinary care and diligence, he will be liable to the owner of the goods.

Section 62.—WAREHOUSEMAN'S LIABILITY FOR LOSS BY FIRE.—

No warehouseman is responsible for any loss or damage to property by fire while in his custody, if he exercises reasonable care and diligence for its protection

and preservation. If the property in his warehouse is destroyed by fire, in order to make him liable for the loss, it must be shown that his own neglect was the cause of the fire, or that, a fire occurring, he had the opportunity to save the property, but neglected to do so, with the means at hand.

Statutes of 1877-78, pp. 949, 950.

Section 63.—SALE OF PROPERTY FOR STORAGE CHARGES.—A warehouseman has a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

A warehouseman's lien may be enforced against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

A warehouseman loses his lien upon goods, by surrendering possession thereof, or by refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act.

If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed.

A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman must give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice must be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice must contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists,

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue shall be paid on or before the day mentioned, not less than ten days, from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale must be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, must be published once a week for two consecutive weeks in a newspaper published in the place

where such sale is to be held. The sale must not be less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement must be posted at least ten days before such sale in not less than six conspicuous places therein.

From the proceeds of such sale the warehouseman must satisfy his lien, including the reasonable charges of notice, advertisement, and sale. The balance, if any, of such proceeds must be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods.

At any time before the goods are sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman must deliver the goods to the person making such payment, if he is a person entitled to the possession of the goods, on payment of charges thereon. Otherwise the warehouseman must retain possession of the goods according to the terms of the original contract of deposit.

If the goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and will incur no liability by reason thereof.

After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of

because of their perishable or hazardous nature, the warehouseman will not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

Section 63a.—NEGOTIATION OF WAREHOUSE RECEIPT.—A negotiable receipt may be negotiated by delivery where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer, or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt must thereafter be negotiated only by the indorsement of such indorsee.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer, or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer, or to another specified person. Subsequent negotiation may be made in like manner.

A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

A negotiable receipt may be negotiated by the owner thereof; or by any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the

terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

A person to whom a negotiable receipt has been duly negotiated acquires thereby such title to the goods as the person negotiating the receipt to him had, or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had, or had ability to convey to a purchaser in good faith for value; and he also acquires the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferor or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor, or a subsequent purchaser from the transferor, of a subsequent sale of the goods.

Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a

contrary intention appears. The negotiation will take effect as of the time when the indorsement is actually made.

A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants, that the receipt is genuine; that he has a legal right to negotiate or transfer it; that he has knowledge of no fact which would impair the validity or worth of the receipt; and that he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

The indorsement of a receipt will not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, will not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress.

Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation

thereof by that person under any sale, or other disposition thereof, to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage or pledge, will have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu will defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu.

Section 63b.—FRAUD BY WAREHOUSEMAN.—

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his control at the time of issuing such receipt, will be guilty of a crime, and upon conviction will be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, will be guilty of a crime, and upon conviction will be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt, will be guilty of a

crime, and upon conviction may be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both.

Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, will be guilty of a crime, and upon conviction may be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, will be guilty of a crime, and upon conviction may be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, will be guilty of a crime, and upon conviction may be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both.

Act of the Legislature, approved March 19, 1909.

Section 63c.—INSURANCE ON STORED PROPERTY.—Both the owner of the goods and the warehouseman have an insurable interest in the property, and if the owner does not insure against loss by fire the warehouseman can insure for his benefit.

Section 63d.—LIABILITY FOR LOSS BY REASON OF DEFECTIVE BUILDING.—A warehouseman is bound in the exercise of reasonable care to make reasonable inspection from time to time to see that his building remains safe and in proper condition. When a warehouseman receives goods in his warehouse for storage, he must be deemed to have held out to the public his building as a proper and fit building in which to store goods. Buildings of this character are liable to deteriorate. They may be weakened by storms and winds, and, when constructed upon piles over waters or low lands, the piles may decay and the foundation become weak, endangering the structure. A warehouseman, therefore, in the exercise of reasonable care, owes a duty to his patrons of making reasonable inspection from time to time to see that the building remains safe and in a proper condition.

Hotel Keepers and Lodging-house Keepers.

Section 64.—LIABILITY OF HOTEL KEEPERS AND LODGING-HOUSE KEEPERS.—Hotel keepers (including boarding-house keepers) and lodging-house keepers have certain rights and liabilities fixed by statute. The language of the California statute referring to hotels is, "Inn keepers, hotel keepers, boarding and lodging-house keepers." There is no difference in the law between an inn and hotel. Both words mean the same thing. An inn is a house which is held out to the public as a place where all transient persons who come will be received and entertained as guests, for compensation,—a hotel. There is a difference between a hotel and a boarding-house, which is this: A hotel is a house where a keeper holds himself out as ready to receive all who may choose to come there and pay an adequate price for the entertainment, while the keeper of a boarding-house reserves the choice of comers and the terms of accommodation, contracting specially with each customer, and most commonly arranging for long periods and a definite abode. There is no difference in the

law between the liability of hotel keepers, boarding-house keepers, and lodging-house keepers. The law puts them all in the same class with reference to their liability for the property of their guests, boarders, or lodgers. Hotel keepers, boarding-house keepers, and lodging-house keepers in California are bound to use ordinary care and diligence in the protection and preservation of the personal property, other than money, of their guests, boarders, or lodgers coming into their houses, and they are liable for losses of or injuries to such property, if occasioned by their lack of ordinary care and diligence. The law passed by the Legislature in 1895 limited the liability of hotel keepers, boarding and lodging-house keepers, to losses occasioned by their lack of ordinary care and diligence, but does not include money within its terms; consequently it seems that greater and more exacting care must be taken of the money of a guest, boarder, or lodger than is required to be exercised with reference to other kinds of personal property. The law provides, however, that in no case of loss of or injury to personal property, other than money, shall the liability of the hotel keeper, boarding-house keeper, or lodging-house keeper exceed the sum of \$100 for each trunk and its contents, \$50 for each valise and traveling bag and contents, and \$10 for each box, bundle or package and contents, placed under his care, unless he has consented in writing with the owner to assume a greater liability. It is customary to give receipts in writing for money left or deposited by guests, and in such case the liability would be for the amount shown by the receipt, in case of loss.

Civil Code, Section 1859.

Section 65.—EXEMPTION FROM LIABILITY IN CERTAIN CASES.—The courts had held hotel keepers, to such a strict liability that the Legislature was induced, in 1895, to pass a law making practically an exemption in certain cases, and modifying to a great extent the extreme strictness of the law as it then stood in this state. By the law passed in 1895, and which is now in force, if a hotel

keeper, or boarding-house or lodging-house keeper, keeps a fireproof safe, and gives notice to his guest, boarder, or lodger that he keeps such a safe, and will not be liable for money, jewelry, documents, or other articles of unusual value and small compass, unless such articles are placed in the safe, he will not be liable for any loss or damage to such articles if not deposited with him to be placed in his safe, provided, that he does not by his own acts contribute to the loss of the property. This law also provides that, in any case, the hotel keeper, boarding-house keeper, or lodging-house keeper shall not be liable for more than \$250 for loss of any money, jewelry, or documents, or other articles of unusual value and small compass, belonging to any guest, boarder, or lodger, unless he shall have given a receipt in writing for such property. Just what the law means by a "receipt in writing," and how that fact alone should make the liability greater, is difficult to understand; but it is probable that the Legislature meant to provide, by this language, that where a receipt is given acknowledging a greater value, then the liability for the loss shall be equal to the admitted value of the property, and that where no receipt is given, no value in excess of \$250 shall be left to be determined by the conflicting testimony of witnesses. The notice provided for in the law need not be in any particular form, and it may be given personally to the guest, boarder, or lodger, or it may be given by putting up a printed notice in a prominent place in the office or in the rooms of the house.

Civil Code, Section 1860.

Section 66.—WHAT PROPERTY MUST BE DEPOSITED IN THE SAFE.—Under the notice provided for by law to be given by the hotel keeper, boarding-house keeper, or lodging-house keeper, he cannot demand that his guest put every article of small compass and peculiar value, or all his money or jewelry, in the safe. The law does not apply to such articles as the guest needs to have about him, for constant and daily use, even though

for personal adornment. Jewelry worn by a woman daily need not, when not actually upon her person, be deposited in the safe, in order to make the hotel keeper or boarding and lodging-house keeper responsible for its loss in his house. If worn daily, the jewelry does not cease to be needed for present personal use when its possessor lays it aside upon retiring for the night. Nor is it necessary, in order to render the hotel keeper liable, that the property should have been delivered into his exclusive personal possession. The guest may retain personal possession of his goods within the house—as of his trunk and its contents, his wearing apparel, and other articles in his room, and any jewelry or valuables carried or worn around his person—without discharging the keeper of the house from responsibility. Therefore the Act of 1895, referred to in the preceding section, is not intended to apply, and does not apply, to the articles just enumerated, needed by the guest for daily use; for it would be a manifest absurdity to require the guest, upon retiring for the night, to leave his personal apparel, or anything carried or worn around his person, in the house safe. The law only applies to such articles as are not needed by the guest for daily use.

Section 67.—LIABILITY OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS FOR LOSS BY FIRE.—In some of the states of the Union the keeper of a hotel is held to be an insurer against loss by fire, and is bound to pay for property lost by a fire, no matter from what cause occurring. But this extreme view is not the law of California. In this state, when a fire occurs, and destroys or injures the property of a guest, boarder, or lodger, the keeper of the house is not liable to pay the damage if he can show that the fire was purely accidental, and that neither his negligence nor the negligence of his servants or employees contributed to the loss. But if the fire occurs through the negligence of the proprietor, or by the neglect of any of his servants or employees, he will be liable for damage to the property of his guests.

Thus, if a cook or fireman negligently leaves coals or ashes containing fire in a position which ignites and destroys the house, or if a chambermaid negligently sets fire to the furniture of a room, or if a porter or bellboy sent to build a fire in the room of a guest sets fire to the house, or if a sufficient watch is not kept, or reasonable protection and guard against fire is not maintained, the keeper of a hotel, boarding-house, or lodging-house will be liable in this state for loss by fire. But where the keeper of the house has done all that a reasonable man can do to guard against the danger from fire, and a fire occurs, without any negligence on his own part or on the part of any of his servants or employees, he will not be liable. Thus, if a fire starts in an adjoining building, or in some other quarter of the town, and reaches and sweeps away his own house; or if a fire occurs by reason of lightning, earthquake, or floods, he will not be liable for losses to his guests, boarders, or lodgers. Indeed, it may be said that it is the law of this state that in no case of loss by fire is the keeper of a hotel, boarding-house, or lodging-house liable for the property of guests, where the fire was purely accidental, and was not occasioned by anything which reasonable care and prudence on the part of himself or his servants and employees might have avoided or prevented.

Section 68.—LIABILITY OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS FOR LOSS BY THEFT.—The liability of the keeper of a hotel, boarding-house, or lodging-house for losses of the property of his guests, boarders, or lodgers, by theft, depends upon whether the thieves come from within the house. If the property is stolen by some one employed in the house, in any capacity, or even by a guest, boarder or lodger, without the fault of the person from whom the property is taken, the keeper of the house will be liable for its loss. But if burglars or rioters break into the house and steal, this will constitute an act which the keeper of the house

could not very well have had any control over, and hence he will not be liable, if he kept his house secured in a reasonable manner.

Section 69.—LIABILITY OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS FOR LOSS OF BAGGAGE.—The liability for loss of baggage begins at the moment the hotel, boarding-house, or lodging-house keeper takes charge of the baggage, whether at the house or elsewhere. Therefore, if a porter solicits a guest at a railroad train, or ferry, or depot, and receives the traveler's check, and indicates the conveyance which the traveler shall take to the house, the keeper is responsible from that moment for the safe delivery of the baggage at the guest's room, and, if it is lost on the way, the keeper of the house is liable. After the baggage has reached the house, the keeper is responsible for its safety, and will be liable for its loss, if the owner of the baggage is not guilty of any negligence which contributes to the loss. After the baggage leaves the house, to be taken to a depot, train, or ferry by the employees of the keeper of the house, his liability continues until the baggage safely reaches its destination there.

Section 70.—LIEN OF HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPER ON BAGGAGE AND OTHER PROPERTY.—A hotel, boarding-house, or lodging-house keeper has a lien upon the baggage and other property of his guest, boarder, or lodger, brought into his house, for the compensation due him. This lien includes his charges for accommodation, board, and lodging, and room rent, and such extras as have been requested and furnished. If the bill is not paid when due, the keeper of a hotel, boarding-house, or lodging house has the right to take possession of the baggage and other personal property of the guest, boarder, or lodger, in the house, and keep possession until the debt is paid.

Civil Code, Section 1861.

Section 71.—SALE OF UNCLAIMED BAGGAGE BY HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS.—Whenever any trunk, carpet-bag, valise, box, bundle, or other baggage, in the possession of a hotel, boarding-house, or lodging-house keeper, remains there unclaimed for the period of sixty days, the property may be sold by him at public auction, and out of the proceeds of the sale he may retain the charges for storage and the expenses of advertising and sale. A notice of at least four weeks, that the property will be sold at auction, must be published in a newspaper. If there is no newspaper in the place where the house is located, then the notice must be published in a newspaper printed at the nearest city or town. The notice of the sale must be published once a week for four successive weeks, and the notice must contain a description of each trunk, carpet-bag, valise, box, bundle, or other baggage, which it is intended to sell, also the name of the owner, if known, the name of the person selling, and the time and place of the sale. If there is any balance left, after retaining enough to pay storage charges and the expenses of the sale, and this balance is not claimed by the rightful owner within one week from the day of sale, the money must be paid into the Treasurer's office of the county where the sale takes place; and if no claim is made upon the County Treasurer for the money within one year, it goes into the County General Fund.

Civil Code, Section 1862.

Section 72.—STATEMENT OF CHARGES, ETC., TO BE POSTED BY HOTEL, BOARDING-HOUSE, AND LODGING-HOUSE KEEPERS.—A statement of charges is required by the law to be posted in every hotel, boarding-house, and lodging-house in this state. The Civil Code, Section 1863, is as follows: "Every keeper of a hotel, inn, boarding or lodging-house shall post, in a conspicuous place, in the office or public room, and in every bedroom of said hotel, boarding-house, inn, or lodging-house, a printed copy of this section, and a statement of charges,

or rate of charges, by the day, and for meals or items furnished, and for lodging. No charge or sum shall be collected or received by any such person for any service not actually rendered, or for any item not actually delivered, or for any greater or other sum than he is entitled to by the general rules and regulations of said hotel, inn, boarding or lodging-house. For any violation of this section, or any provision herein contained, the offender shall forfeit to the injured party three times the amount of the sum charged in excess of what he is entitled to."

Section 72a.—DEFRAUDING HOTEL KEEPERS.—

Any person who obtains any food or accommodation at a hotel, inn, restaurant, boarding-house, or lodging-house without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at a hotel, inn, restaurant, boarding-house, or lodging-house by the use of any false pretense, or who, after obtaining credit or accommodation at a hotel, inn, restaurant, boarding-house, or lodging-house, absconds or surreptitiously removes his baggage therefrom without paying for his food or accommodations, is guilty of a misdemeanor. If a person is convicted of this offense, he is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding \$500, or by both fine and imprisonment.

Statutes of 1903, p. 22; Penal Code, Section 19.

Section 72b.—EXIT AND STAIRWAY SIGNS.—

Every owner, manager, proprietor, lessee or other person having the management, charge or control of any public hotel, lodging or rooming house, is hereby required to put up in conspicuous places in the halls of such hotel, lodging or rooming house, exit and stairway signs and permanently maintain the same. Said signs shall be made and placed where they will definitely direct the patrons thereof to the exits and stairways, so as to enable them to escape from such building in case of fire or other accident.

Every owner, manager, proprietor, lessee or other person, having the management, charge or control of any such hotel, lodging or rooming house who shall violate any of the provisions of this act, or who shall refuse or neglect to comply therewith, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine not to exceed one hundred dollars or by imprisonment not to exceed three months, or by both such fine and imprisonment.

Act of the Legislature, approved March 25, 1911.

Landlord and Tenant.

Section 73.—LEASES OF REAL ESTATE.—The Legislature of California has passed laws regulating by statute the making of leases of real estate. It is the policy of this state to discourage long leases, which have the effect of tying up property for many years, and therefore the law prescribes the longest terms for which real estate may be leased in California, and the courts have sustained these regulations as being wise and prudent.

Section 74.—FOR WHAT TERM LEASES MAY BE MADE IN CALIFORNIA.—A lease of land for agricultural purposes, in which is reserved to the owner any rent or service of any kind, can be made for fifteen years, and no longer. A lease of a town or city lot, in which is reserved to the owner any rent or service of any kind, can be made for ninety-nine years, and no longer; provided, that the property of any municipality, or any minor or incompetent person, cannot be leased for a longer period than ten years.

Statutes of 1903, p. 274.

Act of the Legislature, approved April 19, 1909.

Act of the Legislature, approved May 1, 1911.

Section 75.—WHEN VERBAL LEASE MAY BE MADE.—A lease for a term not exceeding one year may be made verbally, and need not be witnessed by any writing whatever.

Section 76.—WHEN LEASE MUST BE IN WRITING.—A lease for a term longer than one year must be in writing.

Section 77.—FORM OF LEASE.—A lease is not required to be in any particular form, so long as it can be ascertained from its terms what property is leased, the rent reserved, and the term for which the lease is made. The lease must be signed by the parties, of course, but it is not required to be acknowledged. Without acknowledgment before a notary, and without recording, a lease is good between the parties to it. But, as the rights of creditors, and other claims of third parties, may involve the property in litigation, it is always safest and best to acknowledge and record a lease, as in this manner a binding notice of the execution and terms of the lease is given to the world. Following is a form of lease for common use in California:

THIS INDENTURE, made the.....day of.....
....., 191., witnesseth:—

That I,, of
the County of....., State of California,
lessor, do hereby lease, demise, and let unto.....
....., of the same place, lessee, the follow-
ing described real estate situate, lying, and being in the
County of....., State of California, and
particularly described as follows, to-wit:

(Here insert description of property.)

.....
To have and to hold, for the term of.....years, to-wit:
from the.....day of....., 191.,
to the.....day of....., 191.,
yielding and paying therefor the rent of.....
.....Dollars, Gold Coin of the United States
of America; and the said lessee promises to pay the said
rent in such Gold Coin, at and in the following times and
installments, namely,Dollars on the
.....day of....., 191.,
Dollars on the.....day of.....
191., and.....Dollars on the.....
day of....., 191..

(Or, in place of above, insert for monthly payments, as follows: In such Gold Coin, as follows, to-wit: the sum ofDollars per month, monthly in advance, on the.....day of each and every month during said term.)

And the said lessee promises to quit and deliver up the premises to the lessor or his agent or attorney, peaceably and quietly, at the end of the term, in as good order and condition (reasonable use and wear thereof, and damages by the elements excepted) as the same are now or may be put into, and to pay the rent as above stated during the term, and not to make or suffer any waste thereof, nor lease, nor underlet, nor permit any other person or persons to occupy or improve the same, or make, or suffer to be made, any alteration therein, without the consent of the lessor thereto in writing having been first obtained; and that the lessor may enter to view and make improvements, and to expel the lessee if he shall fail to pay the rent as aforesaid, or make or suffer any waste thereof.

And should default be made in the payment of any portion of said rent when due, the said lessor, his agent or attorney, may at his option terminate this lease, and re-enter and take possession of said property.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 77a.—FORM OF LEASE OF AGRICULTURAL LANDS.—The following is a form of lease of agricultural lands:

THIS INDENTURE, made the.....day of , in the year of our Lord one thousand nine hundred and....., between..... , of the County of..... , State of California, the party of the first part, and , of said County and State, the party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained on the part of the said party of the second part, to be paid, kept, and performed, has granted, demised, and to farm let, and by these presents

does grant, demise, and to farm let, unto the said party of the second part, all those lots, pieces, or parcels of land, situate in the County of....., State of California, and particularly described as follows: to-wit:

.....
(Here describe land.)

.....
for the term of.....years from the.....
day of....., 191...

To have and to hold the said demised premises, unto the party of the second part, his heirs, executors, and administrators, for his and their sole and proper use and benefit, for and during the term aforesaid, together with all the tenements and hereditaments thereunto appertaining; and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said party of the first part.

In consideration whereof, the said party of the second part hereby covenants and agrees to and with the party of the first part, that he will occupy, till, and in all respects cultivate the premises above mentioned, during the term aforesaid, in a farmerlike manner, and according to the usual course of farming in the neighborhood; that he will not commit any waste or damage or suffer any to be done; that he will, at his own cost and expense, keep the fences and buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted: that he will pay the party of the first part as rental for said premises for said term the full sum of.....
Dollars, Gold Coin of the United States, as follows, to-wit:

..... Dollars on the.....
.....day of....., 191..., and the remainder in equal yearly payments of.....
Dollars, on the.....day of....., in each and every year during said term of.....years; that this lease cannot and will not be assigned without the written consent of the lessor; and that he will give up and yield peaceable possession of the said premises at the expiration of said term.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(Acknowledgement in usual form.)

Section 77b.—ASSIGNMENT OF LEASE.—The lessee may make an assignment of the lease, with the written consent of the lessor; or, if the lease contains no provision against assignment without consent, then the lessee may make an assignment of the lease without the consent of the lessor.

Section 77c.—FORM OF ASSIGNMENT OF LEASE.
—The following is a form of assignment of lease:

KNOW ALL MEN BY THESE PRESENTS: That I,
....., of the County
of....., State of California, for and in
consideration of the sum of.....
Dollars, Gold Coin of the United States, to me in hand paid
by....., of the same
place, do by these presents sell, convey, assign, transfer,
and set over unto the said.....
....., a certain indenture of lease bearing
date the.....day of....., 191., made by
....., of the County
of....., State of California, to me, of
a certain lot, piece, or parcel of land situate in the County
of....., State of California, and par-
ticularly described as follows, to-wit:

(Here describe property.)

.....
for the term of.....years, reserving unto the
saidthe rent of
.....Dollars, payable in....(monthly or
yearly) payments of.....on the
.....day of.....in each and every....
(month or year)....during said term, with all and singular
the premises therein mentioned and described, and the build-
ings thereon, together with the appurtenances.

To have and to hold the same unto the said.....
....., his heirs, executors,
and administrators, from the.....day of
....., 191., for and during all the remainder yet
to come of the said term of.....years,
mentioned in said indenture of lease. And I do hereby
covenant and agree to and with the said.....

....., that the said assigned premises now are free and clear of and from all former and other gifts, grants, bargains, sales, leases, judgments, executions, back rents, taxes, assessments, and incumbrances, by me suffered, made, or created.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

..... (Seal.)

(Acknowledgment in usual form.)

Section 78.—WHAT REPAIRS LESSOR MUST MAKE.—The lessor of a building intended for the occupation of human beings must, unless there is an agreement to the contrary, put the building into a condition fit for occupation, and keep it in tenantable repair during the term of the lease. If the building gets out of repair by the fault of the tenant, or in a dangerous condition by reason of the tenant's lack of ordinary care, the lessor is not bound to make such repairs, but the tenant himself will be liable to make them.

Civil Code, Sections 1941, 1949.

Section 79.—WHEN LESSEE MAY MAKE REPAIRS.—When dilapidations have been occasioned to a dwelling which the landlord ought to repair, but neglects to do so, the tenant may make the repairs himself, provided the cost of such repairs is not more than one month's rent of the premises; and the tenant may deduct the cost of such repairs as he is compelled to make from the rent. But, before he can legally make the repairs himself, so as to deduct the cost from the rent, he must give reasonable notice to the lessor, stating the character of the dilapidations and the repairs needed, and that the lessee intends to make the repairs if the lessor does not. This notice may be given verbally or in writing. If after such notice the lessor refuses or neglects to make the repairs, the lessee may vacate the premises, in which case he will be discharged from further payment of rent, or the performance of the other conditions of the lease. The law gives the tenant the privilege of

vacating the premises in case the landlord neglects to make the repairs needed, and also authorizes him, if he prefers, to remain and make the repairs himself, when they do not require an expenditure exceeding one month's rent. The law relates only to buildings intended to be occupied by human beings, and the Supreme Court of this State has intimated in several decisions that the tenant of business property has no right to make repairs himself at the expense of the landlord, and that the lessor of business property is not required by the law to keep the building in repair at all. So far as business property is concerned, that is, buildings not intended for human habitation, for residence, the law leaves the matter of repairs to be determined solely by the terms of the agreements in the lease.

Civil Code, Section 1942.

Section 80.—TERMINATION OF LEASE.—A lease is terminated by the expiration of the term, or by the happening of some event which works a forfeiture of the lease, or by consent of the parties. A lease is terminated, as a matter of course, at the end of the term. So, too, it is, of course, within the power of the parties to agree, before the end of the term, for the termination of the lease at any time. The lease may provide that, if any condition of the lease be broken, as for non-payment of the stipulated rent at the time agreed upon, or for breach of a covenant not to assign the lease without the consent of the lessor, the lease shall be terminated, and a breach of the condition will terminate the lease.

Section 81.—RENEWAL OF LEASE.—A lease may provide by its terms for its renewal, and the lessee will have the right to a renewal of the lease according to the agreement. But if the lease gives the privilege of renewal for a further term, the lessee must, before the expiration of the original term, give the lessor notice that he elects to renew the lease; and if he does not give such notice, his right to insist upon the privilege of renewal is lost. If a

lessee of real property remains in possession after the expiration of the term, and the lessor accepts rent from him, the law presumes that the parties have renewed the contract on the same terms and for the same time, but not exceeding one month, when the rent is payable monthly, nor in any case exceeding one year. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of the term without any demand for possession or notice to quit by the landlord, he will be deemed to be holding by permission of the landlord and will be entitled to hold the land under the terms of the lease for another full year. (Act of the Legislature, approved February 28, 1905.)

Civil Code, Section 1945.

Section 81a.—FORM OF NOTICE OF INTENTION TO RENEW LEASE.—Following is a form of notice by tenant of his intention to renew the lease. It is not required to be acknowledged, or recorded, even though the original may be both acknowledged and recorded. The notice may be served on the landlord either personally or by mail. It must be served on the landlord at any time before the expiration of the original lease:

San Francisco, California,....., 191..

John Smith:—Dear Sir:

You are hereby notified that I elect and intend to renew the lease dated....., 191.., executed and delivered by you to me, for the property situated at State of California, in accordance with the terms stated in said original lease with reference to a renewal thereof.

.....
Tenant.

Section 82.—TERM OF HIRING WHEN NO LIMIT IS FIXED.—By the statute of California it is provided, that a hiring of real property, other than lodgings and dwelling-houses, in places where there is no custom on the

subject, is presumed to be for one year from its commencement, when no limit is fixed to the term by the agreement between the parties. The hiring of lodgings or a dwelling-house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus, a hiring at a monthly rate of rent is presumed to be for one month. If there is no agreement respecting either the length of time or the rent, the hiring is presumed to be monthly.

Civil Code, Sections 1943, 1944.

Section 83.—WHEN RENT IS PAYABLE.—The law provides, that when there is no usage or contract to the contrary, rents are payable at the termination of the holding, when it does not exceed one year. If the holding is by the day, week, month, quarter, or year, rent is payable at the termination of the respective periods, as it successively becomes due.

Civil Code, Section 1947.

Section 84.—NOTICE TO QUIT.—When the term of hiring of real property is not specified by the parties, to terminate the hiring, one of the parties must give notice to the other of his intention to end the hiring. The tenancy may be terminated by the landlord giving notice to the tenant, in writing, to remove from the premises. The notice must specify the time within which the tenant must remove from the premises, and must give him a period of not less than thirty days. After this notice has been served, and the period specified in the notice has expired, the landlord may proceed to recover possession, either by re-entering and taking possession or by a suit in court. Three days' notice only is required to be served on a tenant under a lease for a stated term. If such tenant fails to pay the rent agreed upon, the landlord, at any time within one year after the rent becomes due, may give three days' notice, in writing, requiring the payment of the rent within that time; and this notice must also be served on any subtenant who may be in possession of any portion

of the premises. If the tenant has broken some other condition of the lease, the same written notice must be served on him, and on subtenants, if there be any, requiring him to perform the conditions of the lease or surrender the possession of the property. The lease will be saved from forfeiture if the rent is paid or other condition of the lease performed within three days after service of the notice. If the rent is not paid or condition performed within three days after service of the notice, the landlord may recover possession of the property in a suit for unlawful detainer.

Civil Code, Sections 789, 1946; Code of Civil Procedure, Section 1161.

Act of the Legislature, approved February 15, 1911.

(a)—**Raising the Rent.**—The legislature has passed a law providing that a notice of raising rent shall have legal effect. The law reads: "In all leases of lands or tenements, or of any interest therein, from month to month, the landlord may, upon giving notice in writing at least thirty days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish, as a part of the lease, the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month."

Act of the Legislature, in effect February 26, 1907.

Section 85.—HOW NOTICE TO QUIT MUST BE SERVED.—The notice to quit must be served either by delivering a copy to the tenant personally; or, if he is absent from his place of business or residence, by leaving a copy of the notice at either place with some person of suitable age and discretion, and sending a copy through the mail, addressed to the tenant at his place of residence; or if his place of business or residence cannot be ascertained, or if no person of suitable age and discretion can be found

at either place, the notice may be served by posting a copy in a conspicuous place on the premises, and delivering a copy to any person found residing there, and also sending a copy through the mail addressed to the tenant at the place where the property is situated.

Code of Civil Procedure, Section 1162.

Section 85a.—FORM OF NOTICE TO QUIT.—A notice to quit need not be in any particular form to be valid. It is sufficient, in any form, if it shows on its face that possession is demanded, and that the time fixed by the statute is given. The following is a form of notice to quit, to be served where the tenancy is for no definite term:

....., State of
California,, 191

To.....,

Take notice that you are hereby required to quit and deliver up to me the possession of the premises now held and occupied by you, known as.....

.....
(Here describe the premises.)

.....
on the.....day of....., 191..

This is intended as a thirty days' notice to quit, for the purpose of terminating your tenancy.

.....
Landlord.

Section 85b.—FORM OF NOTICE TO PAY RENT OR SURRENDER POSSESSION.—The following is a form of three days' notice to pay rent or surrender possession:

....., State of California,
....., 191..

To.....,

You are hereby required to pay the rent of the premises hereinafter described, and which you now hold possession of, amounting to the sum of.....Dollars, being the amount now due and owing to me by you, within

three days after service of this notice as required by law, or deliver up to me the possession of the said premises.

Said premises are situated at.....

....., and described as follows, to-wit:

.....

(Here describe property.)

.....

.....

Landlord.

Section 86.—OPTION TO PURCHASE IN LEASE.

—The lessor may provide in the lease that the lessee shall have the right to purchase the leased premises at some time within the term. If the lessee concludes to take advantage of the option given him, he must so notify the lessor, and tender the purchase price agreed upon in the lease. If he notifies the lessor that he will take the property, as provided for in the lease, and tenders the purchase price, the lessee will have the right to a deed, and the lessor can be compelled to execute his deed to the property.

Section 86a.—FORM OF LEASE OF PERSONAL PROPERTY.—The following is a form of lease of personal property:

THIS INDENTURE, made this.....day of
....., 191., between....., of
the County of....., State of California, the
party of the first part, and....., of the
same place, witnesseth:

That in consideration of the rents, covenants and agreements to be paid and performed on the part of the said party of the second part, the said party of the first part does hereby lease to the party of the second part all those certain goods and chattels, situate at....., and particularly described as follows, to-wit:

.....

(Here give a particular description of each article of personal property.)

.....

To have and to hold the same to the said lessee, for the term of.....years, beginning.....

....., 191..., and ending.....
 , 191..., the said lessee paying
 therefor the yearly rent of.....Dollars
 during the said term.

And the said lessee covenants and agrees with the said lessor that he will pay the rent aforesaid, in monthly payments of.....Dollars each, on the first day of each and every month during said term; and that he will not assign nor underlet this lease or the said goods and chattels, nor any part thereof, without the written consent of said lessor; and that he will, at his own expense, replace any and all of said goods and chattels which shall be lost, or carelessly or accidentally injured, during the said term; and at the expiration of said term, or sooner termination of this lease, he will restore the said goods and chattels to the said lessor, in the like good order in which they now are, wear and diminution resulting from reasonable use and unavoidable casualties excepted. And it is agreed that, until the expiration of said term, or until condition broken, said party of the second part shall peaceably retain possession of said goods and chattels, but in case any one or more of the conditions of this lease are broken by the said party of the second part, the party of the first part may at any time, day or night, enter the place where said goods and chattels, or any part thereof, may be, and remove the same, and he may use all necessary force to remove the property herein described.

And it is further agreed that time is of the essence of this contract.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

Section 86b.—TENANT MUST DELIVER NOTICE SERVED ON HIM.—Every tenant who receives notice of any proceeding to recover the real property occupied by him, or its possession, must inform his landlord immediately, and must also deliver to his landlord the notice he received, if in writing; and if the tenant fails to inform his landlord of any such notice, or to deliver the notice to

him, if in writing, he will be liable to the landlord for all damages which he may sustain by reason of his failure.

Civil Code, Section 1949.

Section 87.—FORM OF FARMING LEASE ON SHARES.—The following is a form of farming lease on shares:

THIS INDENTURE, made the.....day of
....., 191..., between.....
.....of the County of.....
State of California, the party of the first part, and.....
....., of the same place, the party of the
second part, witnesseth:

That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved and contained on the part of the said party of the second part, his executors or administrators, to be paid, kept, and performed, has granted, demised, and to farm let, unto the said party of the second part, his executors or administrators, all those certain lots, pieces or parcels of land situate, lying and being in the County of
....., State of California, and particularly described as follows, to-wit:

.....
(Here describe the land.)
.....

To have and to hold the said demised premises, unto the party of the second part, his heirs, executors, or administrators, for his and their sole and proper use and benefit, for and during the term of....., years, beginning
....., 191..., and ending.....
191..., together with all the tenements and hereditaments thereunto appertaining, and all the stock and farming utensils, of every name and nature, now being in or upon the same, belonging to the said party of the first part.

In consideration whereof, the said party of the second part hereby covenants and agrees to and with the said party of the first part, that he will occupy, till and in all respects cultivate the premises above mentioned, during the term aforesaid, in a farmerlike manner, and according to the usual course of farming practiced in the neighborhood; that he will not commit any waste or damage, or suffer any to be done; that he will, at his own cost and expense, keep the

fences and the buildings on the said premises in good repair, reasonable wear thereof and damages by the elements excepted; and that he will deliver to the said party of the first part, his heirs, executors, or administrators, or to his or their order, each year during the term of this lease, one equal (here insert share agreed on) of all the proceeds and crops produced on the said farm and premises aforesaid, of every name, kind and description, to be divided on the said premises, in stack and sack, according to the usual course and custom of making such divisions in the neighborhood, and in a seasonable time after such crop or crops shall have been gathered and harvested.

It is further understood and agreed between the aforesaid parties, that the party of the second part shall find all seed or seeds necessary to be sown on said premises; that the party of the second part is to do, or cause to be done, all necessary work and labor in and about the cultivation of the said premises; that he is to have full permission to inclose, pasture, or till and cultivate, the said premises, so far as the same may be done without injury to the reversion, and to cut all necessary timber for firewood, farming purposes and repairing fences; and that he is to give up and yield peaceable possession of the said premises at the expiration of said term. Said first party shall furnish on said premises, at the proper time in each year during the term of this lease, sacks sufficient to hold all the grain coming to said first party.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

Section 87a.—FIXTURES ON LEASED PREMISES.—If the tenant puts in fixtures on the premises—as by building partition walls, elevators, or shelving, counters, etc., attached and built into or upon the walls or other parts of the building so as to form fixtures therein—he cannot remove such fixtures without the consent of the landlord, unless the lease itself contains a clause giving him that right.

If a lease expires, which contains a clause allowing the tenant to remove the fixtures, and a new lease is then made

which leaves out that clause, the tenant loses the right to take the fixtures away; and, upon the expiration of the second lease, the fixtures must be left in the building and be the property of the landlord.

Section 87b.—DESTRUCTION OF PREMISES BY FIRE.—In this state, the hiring of a thing ends by the destruction of the thing hired. Therefore, if a store, dwelling, or factory is leased, and is destroyed by fire, so as to be no longer fit for use, the lease is terminated and the lessee released from future payment of rent. But a lessee, who has taken possession of leased premises for a term of years and paid a part of his rent in advance, cannot, in the absence of any covenant in the lease, recover the rent so paid, in case of the total destruction of the premises by fire without any fault of either party to the lease. (Decided by the Supreme Court of California, in the case of *Harvey vs. Weisbaum*, which decision is printed in Vol. 10, California Decisions, page 177.)

Repudiation of Lease — Landlord's Remedy.—The abandonment of leased premises, and a declaration of intention by the lessee not to pay any more rent, does not change the relation of lessor and lessee, nor discharge the latter from the obligation to pay rent, although the lessor may relet the premises for the benefit of the lessee. Where a lease is repudiated and the premises abandoned, the landlord may rest upon his contract and sue his tenant as each installment of rent, or the whole thereof, becomes due, or he may take possession of the premises and recover damages, which damages is the difference between what he may be able to rent the premises for and the price agreed to be paid under the lease. Where the landlord sues for damages he cannot recover in advance the full price to be paid for the unexpired term, but is limited in his recovery as above stated. (Decided by the Supreme Court of California, in the case of *Bradbury vs. Higginson*, which decision is printed in Vol. 42, California Decisions, page 284.)

Sale of Real Property.

Section 87c.—TRANSFER BY DEED.—The title to real property is transferred from one to another by an instrument in writing called a deed. A deed must be signed by the vendor, and acknowledged by him before a Notary, or other officer having authority to take acknowledgements, and must be recorded in the office of the County Recorder of the county where the land is situated.

(a).—CONDITION AGAINST SALE OF LIQUOR.—Conditions inserted in a deed that intoxicating liquors shall not be sold on the conveyed premises, and providing that the estate granted shall become forfeited for a breach thereof, are lawful and enforceable. (Decided by the Supreme Court of California, in the case of *Burdell vs. Grandi*, which decision is printed in Volume XXXIV of California Decisions, page 519.)

(b).—WHO MAY TAKE ACKNOWLEDGMENTS OF DEEDS.—The acknowledgment of a deed may be made in this state, within the city, county, city and county, township or district for which the officer was elected, or appointed, before either:

Clerk of a court of record;

County recorder;

Court commissioner;

Notary Public;

Justice of the peace.

Act of the Legislature, approved March 21, 1911.

Section 87d.—DEED TO COMMUNITY PROPERTY.—Property acquired by husband and wife, during their marriage, by their joint efforts, is community property. All property acquired during marriage is community property, except property owned by either before marriage, or property acquired by either after marriage by gift, will, or as heir of a deceased person. The husband may sell

the community property, for an adequate consideration, and make a valid deed signed by himself alone. But he cannot make a deed of gift of the community property, without his wife's consent; nor can he sell the community property at all, without the wife's consent, unless he receives a fair and reasonable price for the property. Considering that there might be, in case of disputes, a great variety of opinions as to what is an adequate price for a piece of property, the most conservative business men always require the wife's signature to the husband's deed to community property, even where the law does not require it. Her signature can do no harm, and may prevent costly disputes. There are cases, however, where the husband desires to sell community property, and the wife refuses to sign the deed. In this case, if the property is community property, and if the price paid is the full value of the property, the title of the purchaser will be absolutely good, with the husband's deed alone, without the wife's signature.

Section 87e.—DEED TO SEPARATE PROPERTY.

—Either husband or wife has the right to deed his or her separate property, without the consent of the other, and without the signature of the other to the deed.

Section 87f.—DEED OF GIFT.—A property consideration is not necessary to a valid deed in California. A deed of gift, for love and affection, may be made by one person to another of real property, and the deed will be for a consideration which the law recognizes as sufficient and will sustain.

Section 87g.—FORM OF DEED OF GIFT.—The following is a form of deed of gift, for use in the State of California:—

THIS INDENTURE, made the.....day of.....
, 191., between
, of the County of....., State

of California, the party of the first part, and.....
, of the same place, the party of the
 second part, witnesseth:—

That the said party of the first part, for and in considera-
 tion of the love and affection which the said party of the
 first part has and bears unto the said party of the second
 part, as also for the better maintenance, support, protec-
 tion, and livelihood of the said party of the second part,
 does by these presents give, grant, alien, and confirm unto
 the said party of the second part, and to.....heirs and
 assigns forever, all those certain lots, pieces, or parcels of
 land situate, lying, and being in the County of.....
, State of California, bounded and particularly
 described as follows, to-wit:

(Here describe property.)

.....
 Together with all and singular the tenements, hereditaments,
 and appurtenances thereunto belonging or in any wise apper-
 taining, and the reversion and reversions, remainder and
 remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises,
 together with the appurtenances, unto the said party of the
 second part,heirs and assigns forever.

In witness whereof, the said party of the first part has
 hereunto set.....hand and seal the day and year first
 above written.

.....(Seal.)

STATE OF CALIFORNIA, }
 County of } ss.

On this.....day of....., A. D.
 one thousand nine hundred and.....,
 before me,, a
 Notary Public in and for said.....County
 and State, residing therein, duly commissioned and sworn,
 personally appeared
, known to me to be the person.. whose
 name.. subscribed to and who executed the
 within instrument, and.....acknowledged to me
 that.....executed the same.

In witness whereof, I have hereunto set my hand and
 affixed my official seal, at my office in the.....

County of....., the day and year in
this certificate first above written.

Notary Public in and for the.....
County of....., State of
California.

Commission expires....., 191...

Section 87h.—BARGAIN AND SALE DEED.—The most common form of transfer of real estate is by bargain and sale deed. In such a deed, the true consideration need not be stated. If the consideration, for instance, is \$500, it may be stated in the deed at \$1.00, or any other sum. The law presumes that an adequate consideration was given, and if that should become a disputed question, the law allows proof to be made as to what the consideration really was.

Section 87i.—FORM OF BARGAIN AND SALE DEED.—The following is a form of bargain and sale deed:—

THIS INDENTURE, made the.....day of.....
....., 191..., between.....
....., of the County of....., State
of California, the party of the first part, and.....
....., of the same place, the party
of the second part, witnesseth:—

That the said party of the first part, for and in considera-
tion of the sum of.....Dollars, Gold
Coin of the United States of America, to him in hand paid
by the said party of the second part, the receipt whereof
is hereby acknowledged, does by these presents grant, bar-
gain, sell, and convey unto the said party of the second part,
and to his heirs and assigns forever, all those certain lots,
pieces, or parcels of land situate, lying, and being in the
County of....., State of California, and bounded
and particularly described as follows, to-wit:

(Here describe the land.)

Together with all and singular the tenements, heredita-
ments, and appurtenances thereunto belonging, or in any

wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

.....(Seal.)

STATE OF CALIFORNIA, }
County of} ss.

On this.....day of....., A. D. one thousand nine hundred and....., before me,....., a Notary Public in and for said..... County and State, residing therein, duly commissioned and sworn, personally appeared....., known to me to be the person.. whose name.....subscribed to, and who executed the within instrument, and....., acknowledged to me that executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the..... County of....., the day and year in this certificate first above written.

.....
Notary Public in and for the.....County
of....., State of California.

Commission expires....., 191...

Section 87j.—QUITCLAIM DEED.—It may occur that the grantor has some interest in real estate, which he wishes to transfer, yet the interest is not so exactly ascertained as to be capable of definite description. In this event, it is usual to make a quitclaim deed, the grantor transferring all his right, title, or claim in or to the land, and relinquishing all his claim or right, whatever it may be, to his grantee.

Section 87k.—FORM OF QUITCLAIM DEED.—The following is a form of quitclaim deed:—

THIS INDENTURE, made the.....day of....., 191.., between....., of the County of....., State of California, the party of the

first part, and....., of the same place, the party of the second part, witnesseth:—

That the said party of the first part, for and in consideration of the sum of.....Dollars, Gold Coin of the United States of America, to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has remised, released, and forever quitclaimed, and by these presents does remise, release, and forever quitclaim, unto the said party of the second part, and to.....heirs and assigns, all those certain lots, pieces, or parcels of land, situate, lying, and being in the County of....., State of California, and bounded and particularly described as follows, to-wit:

(Here describe land.)

..... Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular the said premises, together with the appurtenances, unto the said party of the second part, heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set.....hand and seal the day and year first above written.

.....(Seal.)

STATE OF CALIFORNIA, }
County of} ss.

On this.....day of....., A. D. one thousand nine hundred and....., before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared known to me to be the person.. whose name.....subscribed to and who executed the within instrument and.....acknowledged to me that executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of....., the day and year in this certificate first above written.

.....
Notary Public in and for the County of.....
State of California.

Commission expires....., 191...

Section 87l.—WARRANTY DEED.—The purchaser of real estate may insist upon an agreement on the part of the seller to defend the title, to secure him in the possession, in the event of his possession being invaded or questioned by a third person after the sale. The parties to a sale of land may lawfully make an agreement whereby the seller will be bound to defend the title and possession in the purchaser. This agreement is evidenced by a warranty deed, conveying the property, and at the same time binding the seller to stand ready to defend the right of possession in the purchaser, should it be attacked.

Section 87m.—FORM OF WARRANTY DEED.—The following is a form of warranty deed:—

THIS INDENTURE, made the.....day of....., 191., between....., of the County of, State of California, the party of the first part, and....., of the same place, the party of the second part, witnesseth:—

That the said party of the first part, for and in consideration of the sum of.....Dollars, Gold Coin of the United States of America, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to.....heirs and assigns forever, all those certain lots, pieces, or parcels of land, situate, lying, and being in the County of....., State of California, and bounded and particularly described as follows, to-wit:.....

(Here describe land.)

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and toheirs and assigns forever.

And the said party of the first part, and.....heirs, the said premises, in the quiet and peaceable possession of the said party of the second part,heirs, and assigns, against the said party of the first part, and his heirs, and against all and every person or persons whomsoever lawfully claiming or to claim the same, shall and will warrant, and by these presents forever defend.

In witness whereof the said party of the first part has hereunto set.....hand and seal the day and year first above written.

.....(Seal.)

STATE OF CALIFORNIA, }
County of} ss.

On this.....day of....., A. D. one thousand nine hundred and....., before me,
....., a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared
known to me to be the person.. whose name..
subscribed to, and who executed the within instrument, and.....acknowledged to me that.....executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of....., the day and year in this certificate first above written.

.....
Notary Public in and for the County of.....,
State of California.

Commission expires....., 191...

Section 87n.—CORPORATION DEED.—A deed may be made by a corporation, but the deed must be authorized by a resolution of the Board of Directors. When the Board of Directors of a corporation has passed a resolution directing the execution of a deed, the President may sign, execute, and deliver the deed for the corporation.

Section 87o.—FORM OF CORPORATION DEED AND ACKNOWLEDGMENT.—The following is a form of corporation deed, and the acknowledgment thereto. The

acknowledgment is different from the acknowledgment to the deed of an individual, in that it must show the official capacity of the person executing it:

THIS INDENTURE, made the.....day of
, 191., between.....,
 a corporation duly authorized under the laws of the State
 of California, whose principal place of business is at.....
, in the County of.....,
 State of California, party of the first part, and.....
, of the same place, party of the second part,
 Witnesseth:

That, whereas, the said party of the first part is a corporation duly incorporated and existing under and by virtue of the laws of the State of California; and, whereas, in pursuance of the statutes in such cases made and provided, it has acquired and is the owner of the land and premises herein after described; and whereas, the Board of Directors of said corporation, duly assembled, on the.....day of....., duly passed the following resolutions, to-wit:

(Here insert in full the resolution adopted by the Board of Directors authorizing the sale of the land.)

.....

Now, therefore, in pursuance of said resolution aforesaid, and in consideration of the sum of.....

.....Dollars, gold coin of the United States of America, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part does by these presents grant, bargain, sell, and convey unto the said party of the second part, and to his heirs and assigns forever, all those certain lots, pieces, or parcels of land situate, lying, and being in the County of....., State of California, and bounded and particularly described as follows, to-wit:

(Here describe the land.)

.....
 Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

To have and to hold, all and singular, the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said party of the first part, by resolution of its Board of Directors, has caused these presents to be subscribed by its President, and its corporate name and seal to be hereunto affixed, the day and year first above written.

.....(Seal.)
By.....President.

STATE OF CALIFORNIA, }
County of} ss.

On this.....day of....., in the year 191..., before me,, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared....., known to me to be the President of the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of....., the day and year in this certificate first above written.

.....,
Notary Public in and for the County of
....., State of California.
Commission expires....., 191...

Section 87p.—DEED IN ESCROW.—A deed may be deposited by the grantor with a third person, to be delivered to the grantee on performance of a condition, to take effect when the condition is performed. Thus, a deed deposited with a bank, to be delivered to the grantee upon the payment of so much money, or a deed placed in the hands of a third party, to be delivered to the grantee upon the death of the grantor, will take effect when the money is paid, or when the death of the grantor occurs. While in the possession of the third person, and subject to the condition, the deed is called an escrow.

Civil Code, Section 1057.

Section 87q.—EFFECT OF DEED IN ESCROW.—

It often occurs that a person will make a deed in escrow, without sufficient knowledge of the effect of his act, and when, if he knew the law, the deed would not have been made. Many people suppose that a deed can be made, and placed in the hands of a third person, to be delivered upon the death of the maker, and still be taken out of escrow at any time. But this is not the law. On the contrary, it is the law of California, that when the owner of land makes a deed, and delivers it to another, with instructions only to hold without recording until his death, and then to deliver it to the grantee, the grantor cannot recall the deed, nor alter its provisions, and he has no interest in the land left, except a life estate. His deed passes the title to the land at once to the grantee, qualified only by the right of the grantor to use and occupy the property, or take and receive the rents and profits, during his life. The person with whom such a deed is left in escrow has no right to give it back to the grantor, if the latter should change his mind about it. The act of the grantor, in making such a deed, delivered to a third person in escrow, is irrevocable by him, no matter how much he would like to take it back, or how deeply he may regret his act. (Decided by the Supreme Court of California, in the case of *Bury vs. Young*, which decision is printed in Volume 98 of the California Reports, page 446.)

Section 87r.—DEED CANNOT BE CANCELED.—

If a deed is made, executed, and acknowledged, and delivered, but not recorded, the property cannot be transferred back by a redelivery of the deed, or by its cancellation. The grantee in such a case must make a deed back to the grantor, and both deeds must then be recorded.

Civil Code, Section 1058.

Section 87s.—POWER OF ATTORNEY TO MAKE DEED.—The owner of real estate may authorize another person to sell, and to make and execute a deed conveying

his land, for and on his behalf. This authority he may delegate to another by means of a power of attorney. The power of attorney must be executed and acknowledged in the same manner as a deed.

For a form of power of attorney authorizing an agent to sell and convey real estate, see the subject, "Power of Attorney."

Installment Sales of Real Estate.

Section 87t.—SALES ON THE INSTALLMENT PLAN.—Real estate may be sold on the installment plan, the purchaser agreeing to make certain payments at stated times, the title to remain in the vendor until full payment is made. This is what is termed a conditional sale. The buyer may be let into the possession of the property; and yet the legal title will remain with the seller, if it is expressed in the agreement of sale that all installments must be paid before the title will pass or deed be given. The agreement for sale of real property on the installment plan must be in writing, and the agreement should be recorded. If recorded, it is notice to the world that the grantee has a claim upon the land, and the right to obtain the legal title by making stipulated payments.

Section 87u.—PAYMENT OF INSTALLMENTS.—Where the agreement provides that time shall be of the essence of the contract, and that payments shall be made in installments at specified times, it is essential that the purchaser pay each installment as it becomes due, if he wishes to keep the contract good. He must pay, for if he does not, the seller may rescind the contract and forfeit the payments already made.

Section 87v.—VENDOR'S REMEDY IF INSTALLMENTS ARE NOT PAID.—If the purchaser fails to pay any installment, when due, the seller may rescind the

contract. He cannot do this arbitrarily, however, without regard to the rights of the purchaser. The seller should give reasonable notice to the purchaser, that the unpaid installment must be paid, or otherwise the contract will be rescinded and canceled and all prior payments forfeited. If, after receiving this notice, the purchaser still fails to pay the installment, the vendor may cancel the contract, retain the money already paid, and regain the possession of the property. If the purchaser is in possession of the property, and refuses to give it up, the vendor may bring a suit for ejectment, and the courts will put him into possession.

The vendor is not compelled to cancel the contract, however. For he may, on the contrary, sue the purchaser for the amount of each installment, as default is made in its payment, and get a judgment against him. The effect of this will be to enforce and maintain the contract of sale, and the judgment against the purchaser for the installments due can be collected out of his property.

Where there is an absolute agreement on the part of the purchaser, that, if payment is not made at the exact time stipulated therefor, all his rights thereunder shall be forfeited, the courts of California will enforce the contract as it finds it. The hardship of any case will not justify a court in setting aside the solemn agreement of the parties.

The vendor cannot wait until all the installments are due, before he takes action, and then expect the courts to enforce the contract as harshly as it may be drawn up between the parties. If he waits until all the installments are due, he must tender a deed of the land to the purchaser and demand payment of the installments due, if he wishes to enforce the contract. A vendor who waits until the last installment of the purchase price is due cannot sue the vendee for the unpaid purchase money without proof of performance, or readiness to perform, on his part; and the tender of a deed before suit is not alone sufficient, but the tender must be kept good during the court proceedings; the deed must be kept in readiness to deliver, should the vendee elect to pay up and receive the title.

The vendor may sue to compel the purchaser to carry out the contract, and the courts will give damages for failure to do so. The damages allowed will be the difference in the value of the land at the time of the suit and the contract price. The reason of this rule of damages is, the property may have increased in value, and thus the vendor may not be damaged at all, or may even be benefited, when he gets the property back.

Section 87w.—PURCHASER'S REMEDY IF VENDOR FAILS TO FULFIL CONTRACT.—It may happen that the vendor, when the time comes when he should make a deed conveying the title to the purchaser, is unable to do so. He may have been mistaken as to his own title, or some other circumstances may render it impossible for the vendor to meet his obligation, so that he cannot convey a title to the land to the purchaser. In such case, the law is, the purchaser may sue the vendor, and recover back the money he has paid, with interest thereon. If the purchaser has been in possession, and has made improvements on the land, the value of the improvements may also be recovered, if the vendor misrepresented the facts and thereby induced the purchaser to buy.

Section 87x.—FORM OF INSTALLMENT AGREEMENT FOR SALE OF REAL ESTATE.—The following is a form of installment contract for the sale of real estate:—

This Agreement, made and entered into on the..... day of....., in the year of our Lord one thousand nine hundred and....., between....., of the County of....., State of California, the party of the first part, and....., of the same place, the party of the second part, witnesseth: That the said party of the first part, in consideration of the covenants and agreements on the part of the said party of the second part, hereinafter contained, agrees to sell and convey unto the said party of the second part, and said second party agrees to buy, all that certain lot and parcel of land situate in the County of.....,

State of California, bounded and described as follows, to-wit:

.....
(Here insert description of land.)

.....
for the sum of.....Dollars, lawful money
of the United States, to be paid in the manner following,
to-wit:Dollars on the execution of
this contract, the receipt whereof is hereby acknowledged,
and the remainder in monthly installments of.....
.....Dollars, payable on the first day of each
and every month thereafter, until the whole of said purchase
price shall have been paid, together with interest on deferred
payments at the rate of.....per cent per annum
from date until paid.

And the said party of the second part agrees to pay all
State, City, and County taxes, or assessments of whatsoever
nature, which are or may become due on the premises above
described.

In the event of a failure to pay the said installments, or
any of them, by the party of the second part, as said install-
ments or installment shall become due, the said party of the
first part shall be released from all obligation in law or
equity to convey said property, and the said party of the
second part shall forfeit all right thereto, and all payments
theretofore made by said party of the second part shall be
thereby forfeited to the party of the first part.

Time is the essence of this contract.

And the said party of the first part, on receiving such
payments, at the time and in the manner above mentioned,
agrees to execute and deliver to the said party of the second
part, or to his assigns, a good and sufficient deed conveying
the title to said property herein described, free and clear
of incumbrances.

And it is understood that the stipulations aforesaid are to
apply to and bind the heirs, executors, administrators, and
assigns of the respective parties hereto, and that said party
of the second part is to be let into and have immediate
possession of said premises.

IN WITNESS WHEREOF, the parties hereto have
hereunto set their hands and seals the day and year first
above written.

.....(Seal.)

.....(Seal.)

(If the above agreement is intended to be recorded, it
must be acknowledged.)

Employer and Employee.

Section 88.—CONTRACT OF EMPLOYMENT.—

The contract of employment is one by which a person, called an employer, engages another, called an employee, to do something for a compensation. In such a contract there is always either an express agreement or an implied agreement to pay a compensation for the services performed. If the agreement between the employer and the employee fixes the compensation, the law will not interfere with it; but if there is a contract of employment, and no rate of compensation is fixed by the parties, then the law will imply an obligation on the part of the employer to pay what the services performed by the employee were reasonably worth.

Section 89.—OBLIGATIONS OF THE EMPLOYER.

—It may be stated generally of the obligations of the employer, which he assumes towards the employee, by the contract or relation which they mutually enter into, that by the law of California the employer is bound to provide a safe place and safe appliances and machinery for the performance by the employee of his work; that the employer is bound to inform the employee of anything within his own knowledge which renders the place or appliances dangerous, or which increases the ordinary risks of the employment, and which knowledge is not equally open to the observation of the employee; that the employer is bound to use reasonable care and diligence in the selection of competent fellow-servants, and he will be liable to an employee for injuries sustained by reason of his negligence in hiring incompetent employees to work with him; that the employer must keep in safe condition the premises in which his employee works, and must use ordinary care in the inspection and repair of such premises, and in the inspection and repair of machinery and appliances used by him. Also, the law provides that the employer must indemnify his employee for all that he necessarily expends or loses in direct consequence of the discharge of his duties or in obedience

to the directions of the employer, provided that an employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed. And an employer must in all cases indemnify his employee for losses caused by the employer's want of ordinary care, provided that the employee's own negligence must not contribute to his own injury. It is the duty of the employer to inform his employee of latent defects, or extraordinary dangers or risks, connected with the service, of which the employer has knowledge, but which are unknown to the employee. If the employer does not inform the employee of such defects or dangers, he will be liable for damages if the employee is injured. (Decided by the Supreme Court of California, in the case of *Bone vs. Ophir Silver Mining Co.*, which decision is printed in Volume 86 of the *Pacific Reporter*, page 685.)

Section 89a.—EMPLOYER'S LIABILITY FOR INJURIES.—The Legislature of 1911 passed a new employer's liability for injuries act, which is as follows:

1. **Contributory Negligence.**—In any action to recover damages for a personal injury sustained within this state by an employee while engaged in the line of his duty or the course of his employment as such, or for death resulting from personal injury so sustained, in which recovery is sought upon the ground of want of ordinary or reasonable care of the employer, or of any officer, agent or servant of the employer, the fact that such employee may have been guilty of contributory negligence shall not bar a recovery therein where his contributory negligence was slight and that of the employer was gross, in comparison, but the damages may be diminished by the jury in proportion to the amount of negligence attributable to such employee, and it shall be conclusively presumed that such employee was not guilty of contributory negligence in any case where the violation of any statute enacted for the safety of employees

contributed to such employee's injury; and it shall not be a defense:

That the employee either expressly or impliedly assumed the risk of the hazard complained of; or

That the injury or death was caused in whole or in part by the want of ordinary or reasonable care of a fellow servant.

2. Employer Not Exempted by Contract.—No contract, rule or regulation, shall exempt the employer from any of the provisions of the preceding section of this act.

3. Employer Liable for Compensation.—Liability for the compensation hereinafter provided for, in lieu of any other liability whatsoever, shall, without regard to negligence, exist against an employer for any personal injury accidentally sustained by his employees, and for his death if the injury shall approximately cause death, in those cases where the following conditions of compensation concur:

(a) Where, at the time of the accident, both the employer and employee are subject to the provisions of this act according to the succeeding sections hereof.

(b) Where, at the time of the accident, the employee is performing service growing out of and incidental to his employment and is acting within the line of his duty or course of his employment as such.

(c) Where the injury is approximately caused by accident, either with or without negligence, and is not so caused by the wilful misconduct of the employee.

And where such conditions of compensation exist for any personal injury or death, the right to the recovery of such compensation pursuant to the provisions of this act, and acts amendatory thereof, shall be the exclusive remedy against the employer for such injury or death, except that when the injury was caused by the personal gross negligence or wilful personal misconduct of the employer, or by reason of his violation of any statute designed for the protection of employees from bodily injury, the employee may, at his option, either claim compensation under this act, or maintain an

action for damages therefor; in all other cases the liability of the employer shall be the same as if this and the succeeding sections of this act had not been passed, but shall be subject to the provisions of the preceding sections of this act.

4. Employer Defined.—The following shall constitute employers subject to the provisions of this act within the meaning of the preceding section:

The state, and each county, city and county, city, town, village and school district and all public corporations, every person, firm and private corporation (including any public service corporation), who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this act may be claimed, shall, in the manner provided in the next section, have elected to become subject to the provisions of this act, and who shall not, at the time of such accident, have withdrawn such election, in the manner provided in the next section.

5. Employers Subject to the Provisions of this Act.—Such election on the part of the employer shall be made by filing with the industrial accident board, hereinafter provided for, a written statement to the effect that he accepts the provisions of this act, the filing of which statement shall operate, within the meaning of section three of this act, to subject such employer to the provisions of this act and all acts amendatory thereof for the term of one year from the date of the filing of such statement, and thereafter, without further act on his part, for successive terms of one year each, unless such employer shall, at least sixty days prior to the expiration of such first or any succeeding year, file in the office of said board a notice in writing to the effect that he withdraws his election to be subject to the provisions of the act.

6. Employee Defined.—The term “employee” shall be construed to mean:

(a) Every person in the service of the state, or any county, city and county, city, town, village or school district therein, and all public corporations, under any appointment or contract of hire, express or implied, oral or written, except any official of the state, or of any county, city and county, city, town, village or school district therein or any public corporation, who shall have been elected or appointed for a regular term of one or more years, or to complete the unexpired portion of any such regular term.

(b) Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state (who, for the purposes of the next section of this act, shall be considered the same and shall have the same power of contracting as adult employees), but not including any person whose employment is but casual and not in the usual course of the trade, business, profession or occupation of his employer.

7. Employees Subject to the Provisions of this Act.—Any employee as defined in subsection (a) of the preceding section shall be subject to the provisions of this act and of any act amendatory thereof. Any employee as defined in subsection (b) of the preceding section shall be deemed to have accepted and shall, within the meaning of section 3 of this act be subject to the provisions of this act and of any act amendatory thereof, if, at the time of the accident upon which liability is claimed:

(a) The employer charged with such liability is subject to the provisions of this act, whether the employee has actual notice thereof or not; and

(b) At the time of entering into his contract of hire, express or implied, with such employer, such employee shall not have given to his employer notice in writing that he elects not to be subject to the provisions of this act, or, in the event that such contract of hire was made in advance of such employer becoming subject to the provisions of this act, such employee shall, without giving such notice, remain in the

service of such employer for thirty days after the employer has filed with said board an election to be subject to the terms of this act.

8. Medical and Surgical Treatment and Supplies.—Where liability for compensation under this act exists the same shall be as provided in the following schedule:

(a) Such medical and surgical treatment, medicines, medical and surgical supplies, crutches and apparatus, as may be reasonably required at the time of the injury and thereafter during the disability, but not exceeding ninety days, to cure and relieve from the effects of the injury, the same to be provided by the employer, and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same; provided, however, that the total liability under this subdivision shall not exceed the sum of \$100.00.

(b) **Amount of Payments.**—If the accident causes disability, an indemnity which shall be payable as wages on the eighth day after the injured employee leaves work as the result of the injury, and weekly thereafter, which weekly indemnity shall be as follows:

If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability; provided, that if the disability is such as not only to render the injured employee entirely incapable of work, but also so helpless as to require the assistance of a nurse, the weekly indemnity during the period of such assistance shall be increased to one hundred per cent of the average weekly earnings.

If the accident causes partial disability, sixty-five per cent of the weekly loss in wages during the period of such partial disability.

If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with last two paragraphs respectively, subject to the following limitations:

Aggregate disability indemnity for a single injury shall not exceed three times the average annual earnings of the employee.

If the period of disability does not last more than one week from the day the employee leaves work as the result of the accident no indemnity whatever shall be recoverable.

If the period of disability lasts more than one week from the day the employee leaves work as the result of the accident, no indemnity shall be recoverable for the first week of the period of such disability.

The aggregate disability period shall not, in any event extend beyond fifteen years from the date of the accident.

(c) Liability in Case of Death.—The death of the injured employee shall not affect the obligation of the employer under subsections (a) and (b) of this section, so far as his liability shall have accrued and become payable at the time of the death, but the death shall be deemed the termination of the disability, and the employer shall thereupon be liable for the following death benefits in lieu of any further disability benefits, provided that such death was approximately caused by the accident causing such disability:

In case the deceased employee leaves a person or persons wholly dependent upon him for support, the death benefit shall be a sum sufficient when added to the benefits which shall, at the time of death, have accrued and become payable under the provisions of subsection (b) of this section to make the total compensation for the injury and death (exclusive of the benefit provided for in subsection (a)), equal to three times his annual average earnings, not less than \$1,000 nor more than \$5,000, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding in amount to the weekly earnings of the employee.

In case the deceased employee leaves no one wholly dependent on him for support, but one or more persons partially dependent therefor, the death benefit shall be such percentage of three times such average annual earnings of the employee

as the annual amount devoted by the deceased to the support of the person or persons so partially dependent upon him for support bears to such average earnings, the same to be payable, unless and until the industrial accident board shall otherwise direct, in weekly installments corresponding to the weekly earnings of the employee; provided, that the total compensation for the injury and death (exclusive of the benefit provided for in said subsection (a)), shall not exceed three times such average annual earnings.

In the event that the accident shall have approximately caused permanent disability, either total or partial, and the employee shall die within fifteen years after the date of the accident, liability for the death benefits shall exist only where the accident was the approximate cause of death within said period of fifteen years.

If the deceased employee leaves no person dependent upon him for support, and the accident approximately causes death, the death benefit shall consist of the reasonable expenses of his burial not exceeding \$100.

9. Average Annual Earnings.—The weekly earning referred to in section (8) shall be one fifty-second of the average annual earnings of the employee; average annual earnings shall not be taken at less than \$333.33, nor more than \$1,666.66, and between said limits shall be arrived at as follows:

If the injured employee has worked in such employment, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred times the average daily wage or salary which he has earned as such employee during the days when so employed.

If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his average annual earnings shall consist of three hundred times the average daily wage or

salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment in the same or a neighboring place shall have earned during the days when so employed.

In cases where the foregoing methods of arriving at the average annual earnings of the injured employee can not reasonably and fairly be applied, such annual earnings shall be taken at such sum as having regard to the previous earnings of the injured employee, and of other employees of the same or most similar class, working in the same or most similar employment in the same or neighboring locality, shall reasonably represent the average earning capacity of the injured employee at the time of the injury in the employment in which he was working at such time.

The fact that an employee has suffered a previous disability, or received compensation therefor, shall not preclude him from compensation for a later injury, or for death resulting therefrom, but in determining compensation for the later injury, or death resulting therefrom, his average annual earnings shall be such sum as will reasonably represent his annual earning capacity at the time of the later injury, and shall be arrived at according to the previous provisions of this section.

The weekly loss in wages referred to in section 8, shall consist of the difference between the average weekly earnings of the injured employee, computed according to the provisions of this section, and the weekly amount which the injured employee, in the exercise of reasonable diligence, will probably be able to earn, the same to be fixed as of the time of the accident, but to be determined in view of the nature and extent of the injury.

The following shall be conclusively presumed to be solely and wholly dependent for support upon a deceased employee:

A wife upon a husband.

A husband upon a wife upon whose earnings he is partially or wholly dependent at the time of her death.

A child or children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning), upon the parent with whom he or they are living at the time of the death of such parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the death benefit shall be divided equally among them. In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may be at the time of the death of the employee, and in such other cases if there is more than one person wholly dependent, the death benefit shall be divided equally among them, and persons partially dependent, if any, shall receive no part thereof, and if there is more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency.

Questions as to who constitute dependents and the extent of their dependency shall be determined as of the date of the death of the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions, and the death benefit shall be directly recoverable by and payable to the dependent or dependents entitled thereto or their legal guardians or trustees.

10. Notice of Accident Within Thirty Days.—No claim to recover compensation under this act shall be maintained unless within thirty days after the occurrence of the accident which is claimed to have caused the injury or death, notice in writing, stating the name and the address of the person injured, the time and the place where the accident occurred, and the nature of the injury, and signed by the person injured or someone in his behalf, or in case of his death, by a dependent or someone in his behalf, shall be served upon the employer by delivering to and leaving with him a copy of such notice or by mailing to him by registered mail a copy thereof in a sealed and posted envelope addressed to him

at his last known place of business or residence. Such mailing shall constitute complete service. Provided, however, that any payment of compensation under this act, in whole or in part, made by the employer before the expiration of said thirty days shall be equivalent to the notice herein required, and provided further, that the failure to give any such notice, or any defect or inaccuracy therein, shall not be a bar to recovery under this act if it is found as a fact in the proceedings for collections of the claim that there was no intention to mislead the employer, and that he was not in fact misled thereby, and provided further that if no such notice is given and no payment of compensation made, within one year from the date of the accident, the right to compensation therefor shall be wholly barred.

11. Examination by Physician.—Wherever in case of injury the right to compensation under this act would exist in favor of any employee, he shall, upon the written request of his employer, submit from time to time to examination by a regular practicing physician, who shall be provided and paid for by the employer, and shall likewise submit to examination from time to time by any regular physician selected by said industrial accident board, or any member or examiner thereof. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request of the employer, shall refuse to submit to such examination, or shall in any way obstruct the same, his right to begin or maintain any proceeding for the collection of compensation shall be suspended, and if he shall refuse to submit to such examination after direction by the board, or any member or examiner thereof, or shall in any way obstruct the same, his right to weekly indemnity which shall accrue and become payable during the period of such refusal or obstruction, shall be barred. Any physician who shall make or be present at any such examination may be required to testify as to the results thereof.

12. Industrial Accident Board.—Any dispute or controversy concerning compensation under this act, including any in which the state may be a party, shall be submitted to a board consisting of three members, which shall be known as the Industrial Accident Board. Within thirty days before this act shall take effect, the governor, by and with the advice and consent of the senate, shall appoint a member who shall serve two years, and another who shall serve three years, and another who shall serve four years. Thereafter such three members shall be appointed and confirmed for terms of four years each. Vacancies shall be filled in the same manner for the unexpired term. Each member of the board, before entering upon the duties of his office, shall take the oath prescribed by the constitution. A majority of the board shall constitute a quorum for the exercise of any of the powers or authority conferred by this act, and an award by a majority shall be valid. In case of a vacancy, the remaining two members of the board shall exercise all the powers and authority of the board until such vacancy is filled. Each member of the board shall receive an annual salary of three thousand six hundred dollars.

13. Board May Take Testimony.—Upon the filing with the board by any party in interest of an application in writing stating the general nature of any dispute or controversy concerning compensation under this act, it shall fix a time for the hearing thereof, which shall not be more than forty days after the filing of such application. The board shall cause notice of such hearing to be given to each party interested by service of such notice on him personally or by mailing a copy thereof to him at his last known post office address at least ten days before such hearing. Such hearing may be adjourned from time to time in the discretion of the board, and hearings shall be held at such places as the board shall designate. Either party shall have the right to be present at any hearing, in person or by attorney or any other agent, and to present such testimony as shall be pertinent to the controversy before the board, but the board may,

with or without notice to either party, cause testimony to be taken, or inspection of the premises where the injury occurred to be had, or the time books and payroll of the employer to be examined by any member of the board or any examiner appointed by it, and may from time to time, direct any employee claiming compensation to be examined by a regular physician; the testimony so taken and the results of any such inspection or examination, to be reported to the board for its consideration upon final hearing. The board, or any member thereof, or any examiner appointed thereby shall have power and authority to issue subpoenas to compel the attendance of witnesses or parties, and the production of books, papers, or records, and to administer oaths. Obedience to such subpoenas shall be enforced by the superior court of any county, or city and county. After final hearing by said board, it shall make and file its findings upon all facts involved in the controversy, and its award, which shall state its determination as to the rights of the party.

14. Filing of Judgment.—Either party may present a certified copy of the award to the superior court for any county or city and county, whereupon said court shall, without notice, render a judgment in accordance therewith, which judgment, until and unless set aside as hereinafter provided, shall have the same effect as though duly rendered in an action duly tried and determined by said court, and shall, with like effect, be entered and docketed.

15. Court May Confirm or Set Aside Award.—The findings of fact made by the board acting within its powers, shall, in the absence of fraud, be conclusive, and the award, whether judgment has been rendered thereon or not, shall be subject to review only in the manner and upon the grounds following: Within thirty days from the date of the award, any party aggrieved thereby may file with the board an application in writing for a review of such award, stating generally the grounds upon which such review is sought; within thirty days thereafter the board shall cause

all documents and papers on file in the matter, and a transcript of all testimony which may have been taken therein, to be transmitted with their findings and award to the clerk of the superior court of that county or city and county wherein the accident occurred; such application for a review may thereupon be brought on for hearing before said court upon such record by either party on ten days' notice to the other, subject, however, to the provisions of law for a change of the place of trial or the calling of another judge. Upon such hearing the court may confirm or set aside such award, and any judgment which may theretofore have been rendered thereon, but the same shall be set aside only upon the following grounds:

That the board acted without or in excess of its powers;

That the award was procured by fraud;

That the findings of fact by the board do not support the award.

Upon the setting aside of any award the court may recommit the controversy and remand the record in the case to the board, for further hearing or proceedings, or it may enter the proper judgment upon the findings, as the nature of the case shall demand. An abstract of the judgment entered by the trial court upon the review of any award shall be made by the clerk thereof upon the docket entry of any judgment which may theretofore have been rendered upon such award, and transcripts of such abstract may thereupon be obtained for like entry upon the dockets of the courts of other counties, or city and county.

16. Appeal from Award.—Any party aggrieved by a judgment entered upon the review of any award, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the superior court; but all such appeals shall be placed on the calendar of the supreme court and brought to a hearing in the same manner as criminal causes on such calendar.

No fees shall be charged by the clerk of any court for the performance of any official service required by this act,

except for the docketing of judgments and for certified copies or transcripts thereof. In proceedings to review an award, costs as between the parties shall be allowed or not in the discretion of the court.

17. Assignment of Claim.—No claim for compensation under this act shall be assignable before payment, but this provision shall not affect the survival thereof; nor shall any claim for compensation, or compensation awarded, adjudged or paid, be subject to be taken for the debts of the party entitled thereto.

18. Preferred Claim.—A claim for compensation for the injury or death of any employee, or any award or judgment entered thereon, shall be entitled to a preference over the other debts of the employer if and to the same extent as the wages of such employee shall be so preferred; but this section shall not impair the lien of any judgment entered upon any award.

19. Right of Employer to Insure.—Nothing in this act shall affect the organization of any mutual or other insurance company, or any existing contract for insurance or employers' liability, nor the right of the employer to insure in mutual or other companies, in whole or in part, against such liability, or against the liability for the compensation provided for by this act, or to provide by mutual or other insurance, or by arrangement with his employees, or otherwise, for the payment to such employees, their families, dependents, or representatives, of sick, accident or death benefits, in addition to the compensation provided for by this act. But liability for compensation under this act shall not be reduced or affected by any insurance, contributions, or other benefit whatsoever due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his own name, in the manner provided in this act, the liability of

any insurance company, which may, in whole or in part have insured the liability for such compensation; provided, however, that payment in whole or in part of such compensation by either the employer or the insurance company, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid, and provided further, that as between the employer and the insurance company, payment by either directly to the employee, or to the person entitled to compensation, shall be subject to the conditions of the insurance contract between them.

Every contract for the insurance of the compensation herein provided for, or against liability therefor, shall be deemed to be made subject to the provisions of this act, and provisions thereof inconsistent with this act shall be void. No company shall enter into any such contract of insurance unless such company shall have been approved by the commissioner of insurance, as provided by law.

20. Release from Liability.—The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment of any assignable cause of action in tort which the employee or his personal representative may have against any other party for such injury or death, and such employer may enforce in his own name the liability of such other party.

21. Notice of Election by Employer.—The board shall cause to be printed and furnished free of charge to any employer or employee such blank forms as it shall deem requisite to facilitate or promote the efficient administration of this act; it shall provide a proper record book in which shall be entered and indexed the name of every employer who shall file a statement of election under this act, and the date of the filing thereof, and a separate book in which shall be entered and indexed the name of every employer who shall file his withdrawal of such election, and the date of the filing thereof; and a book in which shall be recorded all awards made by the board; and such

other books or records as it shall deem required by the proper and efficient administration of this act; all such records to be kept in the office of the board. Upon the filing of a statement of election by an employer to become subject to the provisions of this act, the board shall forthwith cause notice of the fact to be given to his employees, by posting and keeping continuously posted in a public and conspicuous place such notice thereof in the office, shop, or place of business of the employer, or by publishing, or in such other manner as the board shall deem most effective, and the board shall cause notice to be given in like manner of the filing of any withdrawal of such election; but notwithstanding the failure to give, or the insufficiency of, any such notice, knowledge of all filed statements of election and withdrawals of election, and of the time of the filing of the same, shall conclusively be imputed to all employees.

22. Right to Compromise.—Nothing in this act contained shall be construed as impairing the right of parties interested, after the injury or death of an employee, to compromise and settle upon such terms as they may agree upon, any liability which may be claimed to exist under this act on account of such injury or death, nor as conferring upon the dependents of any injured employee any interest which he may not divert by such settlement, or for which he or his estate shall, in the event of such settlement by him, be accountable to such dependents or any of them.

Act of the Legislature, approved April 8, 1911; in effect September 1, 1911.

Section 90.—OBLIGATIONS OF THE EMPLOYEE.
—The law imposes upon the employee the obligation of serving his employer in good faith, using ordinary care and diligence, and all the skill which he possesses, in serving his employer's interest during his employment. The employee must substantially comply with all the reasonable

directions of his employer concerning the service on which he is engaged, except where it is impossible or unlawful for him to do so. Everything which the employee acquires by virtue of the employment belongs to the employer, except the compensation which is due to him from the employer. An employee must, on demand, render to his employer just accounts of all his transactions in the course of his employment, and must render such accounts as often as may be reasonable. An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference. An employee who is guilty of gross negligence in the performance of his duties is liable to his employer for the damages thereby caused to him; and in such case the employer is only liable to the employee for the value of such services as are properly rendered.

Civil Code, Sections 1978, 1981, 1984, 1985, 1986, 1988, 1990.

Section 91.—TERMINATION OF EMPLOYMENT.

—The employment may be terminated at any time by the mutual agreement of the parties. The employment is also terminated by the expiration of the term contracted for, or by the extinction of its subject, or by the death of the employee, or by the legal incapacity of the employee to act, as in the case where the employee becomes insane. An employment will also be terminated by notice of the death of the employer, and by notice of his legal incapacity to contract; but there is an exception to this rule in cases where the employee has an interest in the subject of the employment, as where, by the terms of the contract of employment, the employee is to have a part ownership of the thing upon which he is employed. An employment having no specified term may be ended at the will of either party, on notice to the other. The employer may discharge the employee for any wilful breach of duty by him in the course of his employment, or in case of the habitual neglect of his duty by the employee, or long-continued incapacity to do his

work; and the employee may quit the service of his employer, even though he has contracted for a specified term, where the employer is guilty of any wilful or permanent breach of his obligations to the employee, as where the employer fails to provide a safe place to work or safe appliances or competent fellow-servants, or in any other way wilfully fails to keep the obligations which the law or his own contract enjoins upon him for the benefit of the employee. An employee, dismissed by his employer for good cause, is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract. An employee who quits the service of the employer for good cause is entitled to a proportionate payment of the compensation which he would have received under a full performance of the contract, as compared with the portion of the services already performed by him.

Civil Code, Sections 1996, 1997, 1999, 2000, 2001, 2002, 2003.

Section 91a.—SANITARY CONDITION OF WORKSHOPS.—Factories and workshops must be kept in good sanitary condition. Where dust, filaments, or injurious gases are produced or generated, exhaust fans or blowers must be used, with pipes and hoods extending to each machine.

Act of the Legislature, approved February 22, 1909.

Section 91b.—EMPLOYMENT OF CHILDREN.—No minor under the age of eighteen shall be employed in laboring in any manufacturing, mechanical, or mercantile establishment, or other place of labor, more than nine hours in one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week, and in no case shall the hours of labor exceed fifty-four hours in a week.

No minor under the age of eighteen years shall be employed or permitted to work between the hours of ten o'clock in the evening and five o'clock in the morning.

No child under fifteen years of age shall be employed in any mercantile institution, office, laundry, manufacturing establishment, workshop, place of amusement, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages.

Provided, that the judge of the juvenile court of the county, or city and county, or in any county or city and county in which there is no juvenile court, then any judge of the superior court of the county or city and county in which such child resides shall have authority to issue a permit to work to any such child over the age of twelve years, upon a sworn statement being made to him by the parent of such child that such child is past the age of twelve years, that the parents or parent of such child are incapacitated for labor, through illness, and after investigation by a probation officer or attendance officer of the city, or city and county, in which such child resides, or in cities and counties where there are no probation or attendance officers, then by such other competent person as the judge may designate for this purpose. The permit so issued shall specify the kind of labor and the time for which it is issued, and shall in no case be issued for a longer period than shall seem necessary to the judge issuing such permit. Such permit shall be kept on file by the person, firm or corporation employing the child therein designated, during the term of said employment, and shall be given up to such child upon his quitting such employment. Such certificate shall be always open to the inspection of the attendance and probation officers of the city and county, city or county, in which the place of employment is situated, or of the officers of the state bureau of labor statistics.

1. Employment During Vacations.—Any such child over the age of twelve years may be employed at any of the occupations mentioned in this act during the regular vacation of the public schools of the city, county, or city and county, in which the place of employment is situated, upon

the production of a permit signed by the principal, vice-principal of the school, or secretary of the board of school trustees or board of education of the school which such child has attended during the term next preceding any such vacation. Such permit shall contain the name and age of the child to whom it is issued, and the date of the termination of the vacation for which it is issued, and shall be kept on file by the employer during the period of employment, and at the termination of such employment shall be returned to the child to whom it was issued.

No minor who is under sixteen years of age shall be employed or permitted to work at any gainful occupation during the hours that the public schools of the city, town or school district in which his place of employment is situated are in session, unless he or she can read English at sight and can write legibly and correctly simple English sentences, or unless he or she is a regular attendant for the then current term at a regularly conducted night school. A certificate of the principal of such school shall be held to be sufficient evidence of such attendance.

2. Notice to Be Posted by Employer.—Every person, firm or corporation employing minors under eighteen years of age, in any manufacturing establishment, shall post, and keep posted, in a conspicuous place in every room where such help is employed, a written or printed notice stating the number of hours per day for each day of the week required of such persons.

3. Record of Employees.—Every person, firm or corporation, agent or officer of a firm or corporation, employing or permitting minors under sixteen and over fifteen years of age to work in any mercantile institution, office, laundry, manufacturing establishment, workshop, place of amusement, restaurant, hotel, apartment house, or in the distribution or transmission of merchandise or messages, shall keep a record of the names, ages, and places of residence of such minors, and shall have on file a certificate of age and schooling, as provided in this act, for every such minor

so employed, said record and certificate to be open at all times to the inspection of the school attendance and probation officers of the city and county, city, or county, in which the place of employment is situated, or of the officers of the state bureau of labor statistics.

4. Age and Schooling Certificates.—An age and schooling certificate shall be approved only by the superintendent of schools of the city or city and county, or by a person authorized by him in writing, or where there is no city or city and county superintendent of schools, by a person authorized by the local school trustees; provided, that the superintendent or principal of any school of recognized standing shall have the right to approve an age and schooling certificate, and shall have the same rights and powers as the superintendent of public schools to issue the certificate herein provided, for children attending such schools. The persons authorized to issue age and schooling certificates shall have the authority to administer the oaths necessary for carrying out the provisions of this act, but no fees shall be charged for issuing such certificates.

An age and schooling certificate shall not be approved unless satisfactory evidence is furnished by the last school census, the certificate of birth or baptism of such child, the public register of birth of such child, or in some other manner, that such child is of the age stated in such certificate.

A duplicate copy of each age and schooling certificate granted under the provisions of this act shall be kept by the person issuing such certificate, such copy to be filed with the county superintendent of schools in the county where the certificate is issued; provided, that all such copies of certificates issued between June 25th and December 25th of any year shall be filed not later than December 31st of such year; and those issued between December 25th and June 25th of the ensuing year shall be filed not later than June 30th of each year.

The certificate as to the birthplace and age of the minor under sixteen and over fifteen years of age shall be signed

by his father, his mother, or his guardian; if a child has no father, mother, or guardian living in the same city or town, his own signature to the certificate may be accepted by the person authorized to approve the same.

Every person authorized to sign the certificate prescribed by this act, who knowingly certifies to any false statement therein, is guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five nor more than fifty dollars, or imprisonment not more than thirty days, or by both such fine and imprisonment.

5. School and Work.—No child having a permit to work, as prescribed in section 2 of this act, and no child having an age and schooling certificate, and no other child, between the ages of fifteen and sixteen years, who, if between the ages of eight and fifteen years, would by law be required to attend school, shall, while the public schools are in session, be and remain idle and unemployed for a period longer than two weeks, but must enroll and attend school; provided, that within one week after any child having such a permit to work or such age and schooling certificate shall have ceased to be employed by any employer, such employer shall, in writing, giving the latest correct address of such child known to such employer, notify, in the case of a child having a permit to work, the judge of the juvenile court in the county of said child's residence, or the probation officer of such juvenile court, or in the case of a child having an age and schooling certificate, the county superintendent of schools of such county, that such child is no longer employed by such employer; and such judge of the juvenile court, or such probation officer, or such county superintendent of schools, shall thereupon immediately notify the attendance officer having jurisdiction in the place of such child's residence, giving the said latest correct address of such child, that such child is neither at work nor in school; and provided, further, that no such child shall be permitted to cease school attendance, without securing a permit to work, or an age and schooling certificate as provided in this act.

6. Penalty for Violating Law.—Any person, firm, corporation, agent, or officer of a firm or corporation that violates or omits to comply with any of the foregoing provisions of this act, or that employs or suffers or permits any minor to be employed in violation thereof, is guilty of a misdemeanor, and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars or more than two hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment, for each and every offense. A failure to produce any age and schooling certificate or permit or to post any notice required by this act, shall be prima facie evidence of the illegal employment of any person whose age and schooling certificate or permit is not produced, or whose name is not so posted. Any fine collected under the provisions of this act shall be paid into the school funds of the county, or city, or city and county in which the offense occurred.

7. Farm Labor — Domestic Service — Child Actors.—Nothing in this act shall be construed to prohibit the employment of minors at agricultural, horticultural, or viticultural or domestic labor during the time the public schools are not in session, or during other than school hours. Nor shall anything in this act be construed to prohibit any child between the ages of fifteen and eighteen years, who is by any statute or statutes of the State of California, now or hereafter in force, permitted to be employed as an actor, or actress, or performer, in a theatre, or other place of amusement, previous to the hour of ten o'clock P. M., in the presentation of a performance, play or drama, continuing from an earlier hour till after the hour of ten o'clock P. M., from performing his or her part in such presentation as such employee between the hours of ten and twelve o'clock P. M.

Act of the Legislature, approved April 14, 1911.

Section 91c.—EMPLOYMENT AGENTS.—Employment agents must procure a license from the Commissioner of the Bureau of Labor Statistics, and must pay therefor, in

cities of the first class, first and one-half class, and second class, an annual fee of fifty dollars; in cities of the third and fourth classes, an annual fee of twenty-five dollars; and in all other cities and towns, an annual fee of six dollars. Branch employment agencies must each have a separate license. The license must be posted in a conspicuous place on the premises. The license is good from the date of issuing to the 31st day of March following.

Act of the Legislature, approved March 6, 1909 (in effect on and after April 1, 1909).

Section 91d.—HOURS OF LABOR OF FEMALES.—

No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or telegraph or telephone establishment or office, or by any express or transportation company in this state more than eight hours during any one day or more than forty-eight hours in one week. The hours of work may be so arranged as to permit the employment of females at any time so that they shall not work more than eight hours during the twenty-four hours of one day, or forty-eight hours during any one week; provided, however, that the provisions of this act in relation to the hours of employment shall not apply to nor affect the harvesting, curing, canning or drying of any variety of perishable fruit or vegetable.

Every employer in any manufacturing, mechanical or mercantile establishment, laundry, hotel, or restaurant, or other establishment employing any female, shall provide suitable seats for all female employees, and shall permit them to use such seats when they are not engaged in the active duties of their employment.

Any employer who shall require any female to work in any of the places mentioned more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect, or refuse to so arrange the work of females in his employ so that they shall not work more than the number of hours provided for in this act during any day of twenty-four hours, or who shall fail, neglect,

or refuse to provide suitable seats as provided in section two of this act, or who shall permit or suffer any overseer, superintendent, foreman, or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than \$50 nor more than \$200, or imprisoned in the county jail not less than five nor more than thirty days, or both fined and imprisoned.

Act of the Legislature, approved March 22, 1911.

Section 91e.—PAYMENT OF WAGES.—Whenever an employer discharges an employee, the wages earned and unpaid at the time of such discharge shall become due and payable immediately. When any such employee not having a contract for a definite period quits or resigns his employment the wages earned and unpaid at the time of such quitting or resignation shall become due and payable five days thereafter.

All wages other than those above mentioned earned by any person during any one month shall become due and payable at least once in each month, and no person, firm or corporation for whom such labor has been performed shall withhold from any such employee any wages so earned or unpaid for a longer period than fifteen days after such wages become due and payable; provided, however, that nothing herein shall in any way limit or interfere with the right of any such employee to accept from any such person, firm or corporation wages earned and unpaid for a shorter period than one month.

Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars.

None of the provisions of this act shall apply to any county, city and county, incorporated city or town, or other municipal corporation.

Act of the Legislature, approved May 1, 1911.

No person, firm or corporation engaged in any business or enterprise within this state shall issue, in payment of or as an evidence of indebtedness for wages due an employee, any order, check, memorandum or other acknowledgement of indebtedness, unless the same is negotiable, and is payable upon demand without discount in cash at some bank or other established place of business in the state; provided, however, that the provisions of this act shall not apply to counties, cities and counties, municipal corporations, quasi municipal corporations, or school districts organized and existing under the laws of this state. Any person, firm, or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not to exceed five hundred dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

Act of the Legislature, approved March 1, 1911.

Section 91f.—RAILROAD EMPLOYEES.—It shall hereafter be unlawful for any corporation or receiver operating any line of railroad in whole or in part in this state, or any officer, agent or representative of such corporation to require or knowingly permit any conductor, engineer, fireman, brakeman, train dispatcher or telegraph operator to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least eight consecutive hours off duty.

It shall hereafter be unlawful for any corporation or receiver operating any line of railroad in whole or in part in this state, or any officer, agent, or representative of such company or receiver to require or knowingly permit any conductor, engineer, fireman, brakeman, train dispatcher or telegraph operator, who has been on duty for sixteen consecutive hours and who has gone off duty, to again go on

duty or perform any work for such receiver or corporation until he has had at least eight hours off duty.

Any corporation or receiver operating a line of railroad in whole or in part within this state, who shall violate any of the provisions of this act shall be liable to the State of California in a penalty of not less than two hundred dollars nor more than one thousand dollars for each offense, and such penalties shall be recovered and suit therefor shall be brought in the name of the State of California in any court having jurisdiction of the amount in any county into or through which said railroad may pass. Such suit or suits may be brought either by the attorney general of the state or under his direction by the district attorney of any county or city and county in the State of California into or through which said railroad may pass.

Any officer, agent or representative of any corporation or receiver operating any line of railroad in whole or in part within this state, who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction therefor shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, or by confinement in the county jail for not less than ten nor more than sixty days, or by both fine and imprisonment, and such person so offending may be prosecuted under this section, either in the county where such person may be at the time of commission of the offense, or in any county where such employee has been permitted or required to work in violation of this act.

Provided, that the provisions of this act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen; provided, further, that the provisions of this act shall not apply to the crews of wrecking or relief trains.

Act of the Legislature, approved April 21, 1911.

Master and Servant.

Section 92.—WHO IS A SERVANT.—There is a kind of employment which is distinguished under the head of “Master and Servant,” in the law of California, as in the law of other countries. The term applies particularly to one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master. The word “servant” is not confined by our law to persons who are in domestic service, but it includes all who are entirely under the direction and control of the employer, with no independent choice or business of their own, in rendering of personal services of any kind.

Section 93.—TERM OF HIRING.—A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piece-work, for no specified term. Custom in a particular employment or a particular place may change the case, but if there is no agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the services are performed. Where after the expiration of an agreement respecting wages and term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term. The Bank of Suisun employed a bookkeeper, for the year 1898, at an annual salary of \$1,200, payable monthly, and he continued in that employment during the first two months of 1899. He was then discharged, and he sued the bank for \$1,000, the balance of his salary for the year. There was a judgment of the Superior Court for the amount against the bank, and the Supreme Court decided the case against the bank, saying: “The presumption

arises that the employment was renewed for the same wages and term as for the previous term." (Decided by the Supreme Court of California in the case of Gabriel vs. Bank of Suisun, which decision is printed in Volume 28, California Decisions, page 720.)

Civil Code, Section 94.

Section 94.—WHEN SERVANT MAY BE DISCHARGED.—The law is that a master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not, if he is guilty of misconduct in the course of his service, or of gross immorality, though not connected with his service; or if, being employed about the person of the master or in a confidential position, the master discovers that the servant has been guilty of misconduct before or after the commencement of his services, of such a nature that the master, had he known or contemplated the facts, would not have employed him.

Civil Code, Section 2015.

Principal and Agent.

Section 95.—DEFINITION OF AGENCY.—An agent is one who represents another, called the principal, in dealings with third persons. And as a great part of the business of all communities is transacted through the medium of agents, it is proposed in following sections to give the law of California applying to the relative rights and obligations of Principal and Agent in this state.

Section 96.—KINDS OF AGENCY.—There are two kinds of agents, special agents and general agents. An agent for a particular transaction is called a special agent, because he is appointed with special power to do that particular thing. A general agent, on the other hand, has a general authority conferred upon him to transact business

of his principal, which includes more than one particular act. An agency, when it exists at all, is either actual or ostensible. An agency is actual when the agent is really employed by the principal. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another, who is not really employed by him, to be his agent.

Civil Code, Sections 2230, 2297, 2298, 2299.

Section 97.—AUTHORITY OF AGENT.—An agent has authority to do whatever his principal might do in the business for which he is employed. He has authority to do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency. But he has only such authority as the principal confers upon him, and he will be limited in his authority to the particular business for which he is employed. Whatever he does within the scope of his employment, necessary or proper and usual, in the ordinary course of business, to effect the purpose of his agency, will be binding upon his principal. His declarations as to the subject of his agency, within the scope of his employment, will bind his principal; as where an agent employed to sell goods makes at the time a representation as to their quantity or quality.

Civil Code, Sections 2315, 2319, 2320.

Section 98.—WHAT INCLUDED IN AUTHORITY TO SELL PERSONAL PROPERTY.—An authority to sell personal property includes authority to warrant the title of the principal, and the quality and quantity of the property.

Civil Code, Section 2323.

Section 99.—WHAT INCLUDED IN AUTHORITY TO SELL REAL ESTATE.—An agent's authority to sell and convey real property includes authority to give the usual covenants of warranty.

Civil Code, Section 2324.

Section 100.—AUTHORITY OF AGENT TO RECEIVE PRICE OF PROPERTY.—A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterward. But neither a general nor a special agent to sell has any authority to receive anything but money in payment of the price of the thing sold. Therefore, if the agent sells property of his principal, and accepts part cash and part in something else, the principal will not be bound.

Civil Code, Sections 2325, 2326.

Section 101.—AGENT'S POWER TO DISOBEY INSTRUCTIONS.—An agent has power to disobey his instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, when there is not time to communicate with the principal. The general rule is, that an agent must follow and adhere to the instructions and authority he has received from his principal, but under some circumstances he may depart from his instructions, and the law will justify him, and his principal will be bound. So where, from the necessities of the case, without the agent's fault or neglect, some sudden and unexpected emergency or extraordinary or supervening necessity arises, or some unforeseen event happens, which will not admit of delay for consultation or communication with the principal, if the agent, exercising prudence and sound discretion, in good faith adopts the course which seems best to him, under all the circumstances as they exist, he will be justified, and his acts will bind his principal, though subsequent events may demonstrate that some other course would have been the better.

Section 102.—AGENT CANNOT HAVE AUTHORITY TO DEFRAUD PRINCIPAL.—An agent can never have authority to do any act which is a fraud upon the principal, and is known or suspected by the person with

whom he deals to be fraudulent. The agent must act in good faith with his principal, and if he enters into collusion with another to obtain an advantage over his principal, or to obtain the property of the principal for less than it is worth, the courts of this state will be ready to give the principal relief against both, by restoring to him the property of which he has been defrauded, or, if this cannot be done, by giving him damages as compensation. Many illustrations might be given. Where an agent invests money belonging to his principal for the purchase of an interest in a syndicate, of which the agent is a member, and in which he holds an interest, and which is indebted in a large amount, and, to induce the investment, leads the principal to believe that he is not a member of the syndicate, or interested therein, and represents that the principal will not have any calls to pay upon becoming a member thereof, the law imputes fraud on the part of the agent, and the principal may avoid the transaction and recover from the agent the amount so invested. So, it is the law of this state, that an agent must not unite his personal and his representative characters in the same transaction; for the law will not permit him to be exposed to the temptation, or brought into a situation where his own personal interests will conflict with the interests of his principal. In dealing without the intervention of his principal, if an agent for the purpose of selling property of the principal purchases it himself, or an agent for the purpose of buying property for the principal buys it from himself, either directly or through the instrumentality of a third person, the sale or purchase is voidable, and will always be set aside at the option of the principal.

Civil Code, Section 2306.

Section 103.—AGENT'S ACTUAL AUTHORITY.—

The actual authority of an agent is such as a principal intentionally confers upon him, or intentionally or by want of ordinary care allows the agent to believe himself to be possessed of. An agent's authority is actual when there is a contract of employment existing between him and the

principal. The principal may have given the agent instructions to act in a certain way; or a course of dealings or other circumstances between them may have been such as to lead the agent to believe that his authority from the principal extended to the things done; or the principal may have stood by and without objection witnessed the conduct of the agent, and thus made the agent believe that his authority from the principal was sufficient to warrant the acts done by him; and in all such cases the agent will be deemed to have had authority actually given him by the principal.

Civil Code, Sections 2299, 2316.

Section 104.—AGENT'S OSTENSIBLE AUTHORITY.—The ostensible authority of an agent is such as the principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent possesses. There are two essential features of an ostensible authority; the third party must believe that the agent has authority; and such belief must be generated in his mind by some act or neglect of the person whom he seeks to hold liable as principal. A belief founded on the agent's statement is not sufficient; for a party has no right to take the agent's word for the existence of his authority. But where the agent shows letters or telegrams, which are worded so as to lead a reasonable man to believe that he has received authority from the principal to act for him in a certain way; or where the principal has been in the habit of receiving money, for shipments of products or goods, through the same agent, in similar transactions; or where the principal has been in the habit of honoring drafts signed by the same person as his "agent"; or where similar transactions have occurred in which the acts of the alleged agent were authorized or ratified; in all such cases, if the third party knows of the former transactions, and has received no notice that the principal will not be responsible, he will be justified in believing that the agent has authority, and the principal will be bound, even though the person for whom the agent assumes to act may not have intended to hold him out as

such agent. On the other hand, a principal is bound by acts of his agent, under merely ostensible authority, to those persons only who have in good faith, and without ordinary negligence, incurred a liability or parted with value upon the faith of it. Therefore, if there is anything in the circumstances of a transaction, or in the conduct of one who represents himself as agent, which ought to excite the suspicions or stimulate the inquiry of a reasonable man, and the means of inquiry are open to him, and he neglects to make such inquiry or investigation as a reasonable man under the circumstances should be expected to make, the principal will not be liable for the acts of one who has no actual authority as agent to act for him. The statements of the agent himself do not prove the agency. And one who deals with another, upon his mere statement that he is the agent of a third person, takes upon himself the risk of being able to show, if a dispute occurs, that such agency really existed. He cannot hold the third person as a principal, under such circumstances, unless he can produce proof of the agency aside from the agent's own statements. (Decided by the District Court of Appeals, in the case of *Apler vs. Tor-mey*, which decision is printed in Volume 85 of the *Pacific Reporter*, page 661.)

Civil Code, Sections 2300, 2334.

Section 105.—RATIFICATION OF AGENT'S ACTS.

—A person may ratify the acts of another, done for him as his pretended agent, and so make himself liable, though he had given the agent no authority before the act was done. This ratification may be in many ways. It may be directly, by notice to the party with whom the agent has dealt; or it may be by receiving and retaining the fruits of the agent's acts; or it may be by silence and failure to object after being fully informed of the facts, for if one is fully informed of a contract made by another in his name, and by virtue of pretended authority from him, and remains silent and does not repudiate the contract within a reasonable

time, he is presumed to give his consent and acquiescence to the contract. But a ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified; so where the contract made by the agent was one which the law requires to be in writing, the ratification of the agent's act must also be in writing.

Civil Code, Section 2310.

Section 106.—HOW AGENCY IS CREATED.—An agency may be created by authority given before the act done, and its creation will be presumed from a subsequent ratification. The authority conferred upon an agent may be verbal, and it will be sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

Civil Code, Sections 2307, 2309.

Section 107.—MUTUAL OBLIGATIONS OF PRINCIPAL AND THIRD PERSONS.—An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal. And the principal is liable, even if the agent exceeds his instructions, where the party with whom he deals is not aware of it. In either case, the question of the authority of the agent must depend, so far as it involves the rights of innocent third persons who have relied thereon, upon the character bestowed, and not upon the instruction given. Or, in other words, the principal is bound to third persons who have relied thereon in good faith, and in ignorance of any limitations or restrictions, by the apparent authority he has given to the agent, and not by the actual or express authority, where that differs from the apparent; and this, too, whether the agency be a general or special one.

As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought in good faith and the exercise of ordinary care and diligence to communicate to the other. Notice to the agent of a corporation is notice to the corporation itself.

An instrument within the scope of his authority, by which an agent intends to bind his principal, does bind him, if such intent is plainly inferable from the instrument itself.

A principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent as a part of the transaction of such business, and for the agent's wilful omission to fulfill the obligations of the principal.

Sometimes a person deals with a man without knowing or having reason to believe that he is not acting for himself, but is really only the agent for another. In such cases, where the fact is afterwards disclosed that another is the principal, and the principal makes a claim arising out of the contract, the party who dealt with the agent may set off against the principal all claims which he might have set off against the agent before receiving notice that he was an agent.

An undisclosed principal will be liable when he becomes known, upon a contract made by the agent in his own name. Where a party sells goods to one who afterwards turns out to have been the agent of another, and the principal receives the benefit of the transactions, the principal will be held responsible for the goods furnished the agent. But the statute of this state provides, that if exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment made to the agent in good faith, before receiving notice of the creditor's election to hold the principal responsible.

Civil Code, Sections 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338.

Section 108.—OBLIGATIONS OF AGENTS TO THIRD PERSONS.—One who assumes to act as an agent thereby warrants to all who deal with him in that capacity, that he has the authority which he assumes. And if one acts as an agent, without authority, the party injured may sue him for the breach of the warranty and recover his losses.

If, with the agent's consent, credit is given to him personally in a transaction, he will be responsible as a principal to third persons. He will also be personally responsible, whenever he enters into a contract in the name of his principal, without believing, in good faith, that he has authority to do so. He will also be responsible when his acts are wrongful in their nature. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control at the time of the demand, on being indemnified for any advances which he has made to his principal, in good faith, on account of the same; and he is responsible therefor, if, after notice from the owner, he delivers it to his principal.

Civil Code, Sections 2342, 2343, 2344.

Section 109.—AGENT'S DELEGATION OF HIS POWER.—An agent, unless specially forbidden by his principal to do so, can delegate his power to another person in any of the following cases, and in no others: (1) When the act to be done is purely mechanical; (2) when it is such as the agent cannot himself, and the sub-agent can, lawfully perform; (3) when it is the usage of the place to delegate such powers; or, (4) when such delegation is specially authorized by the principal.

A sub-agent represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the sub-agent. Of course, if the agent should without lawful authority appoint a

sub-agent, he would be responsible to third persons for such sub-agent's acts.

Civil Code, Sections 2349, 2351.

Section 110.—TERMINATION OF AGENCY.—An agency is terminated, as to every person having notice, by the expiration of its term. It is also terminated by the extinction of its subject, as where an agent to sell certain goods disposes of all of them, or where the subject of the agency is lost or destroyed so that nothing more can be done about it. It is also terminated by the death of the agent. It is also terminated by the agent's renunciation of the agency. It is also terminated by the incapacity of the agent to act as such, as where the agent becomes insane, or from some other cause it becomes impossible for the agent to perform his duties. It is also terminated when revoked by the principal, or by the principal's death, or by the principal's incapacity to act; but there is an exception to the rule that an agency is thus terminated because of the revocation by death or incapacity of the principal, in cases where the agent has acquired from his principal an interest in the thing which is the subject of the agency; for such an interest may survive all of these events, and be binding upon the principal's heirs, administrators, and executors, so as to continue the agency in existence. The interest which will keep alive the agency, under such conditions, must not be a mere lien for compensation or commissions, but must be an interest in the property or other subject of the agency.

Civil Code, Sections 2355, 2356.

Wholesaler's Agents.

Section 111.—TRAVELING AGENTS.—In modern business enterprise the employment of traveling agents by wholesale houses is adopted as one of the necessary means of obtaining or keeping trade. The same ordinary rules which apply to the agents of other men apply to the agents

employed by wholesalers, except when varied by custom or usage in a particular business or locality.

Section 112.—SALE BY SAMPLE.—The agent of a wholesaler who carries samples with him, when he exhibits the samples to the customer, and solicits his order for the goods, warrants that the bulk will be equal to that of the sample. This is absolutely necessary as a rule of law, as well as the custom among merchants.

Section 113.—PURCHASER'S RIGHT TO RETURN GOODS.—The purchaser of goods sold by sample has a right to make reasonable inspection of the goods, and if the bulk is not equal to the sample, he may repudiate the sale and return the goods. But his inspection and objection must be reasonable. If he keeps the goods, unpacked and unopened, for a long time after he receives them, his inspection will not be reasonable; and if, after inspection, he uses a part of the goods himself, or disposes of a part to others, or delays in sending them back to the wholesaler, his right to avoid liability for the purchase price will be lost. He must act promptly in inspecting the goods, and must with equal promptness return them, if he does not wish to be held for them.

Section 114.—COLLECTIONS BY TRAVELING AGENT.—A commercial traveler who makes collections for his house cannot, without special authority from the house, accept anything but money from the debtor.

Section 115.—GIVING CREDIT.—A commercial traveler may sell goods on credit, where that is the usage or custom of the place or business; and when a customer buys on credit from a wholesaler's agent, in accordance with a usage between them of long standing, and without notice of any change in the wholesaler's terms, the latter will be bound, even if he has instructed his agent to give no more credit.

Section 116.—DECLARATIONS OF WHOLESALER'S AGENT.—When a commercial traveler approaches a customer, with or without samples of his principal's goods, he stands in the place of the principal and acts for and in his behalf. As the principal's own declarations would bind him, if he were present, so the agent's declarations within the scope of his authority, made at the time of the sale, and relating to the goods, will be binding upon the principal. So, whatever the agent of a wholesaler who is sent out to sell the goods of his principal states, as to the quantity, or quality, or condition, or price, or the time and manner of shipment, or any other fact which is material to or an inducement for the sale, it will bind the principal as though he had made the representations in person.

Section 117.— NOTICE TO WHOLESALER'S AGENT.—Notice of a fact given to the agent is notice to the wholesaler. Therefore, if the purchaser gives notice to the agent of any fact with respect to the contract or the goods, it is notice to the wholesaler himself, and he will be bound by it.

Section 118.—FAILURE TO SHIP GOODS.—When a commercial agent solicits and receives an order for goods, and neglects to send the order to his house, or the principal refuses to honor the order, after receiving it, the wholesaler will be liable to the customer for all damages sustained by him, if the goods were ordered in good faith.

Section 119.— NOTICE BY WHOLESALER OF TERMINATION OF AGENCY.—A wholesaler must give notice to his customers of the termination of an agent's authority, or he will be bound by the agent's contracts with persons from whom he has formerly solicited orders, even if made after the agent's authority has actually ceased. Where a wholesaler dismisses an agent from his employ, and revokes his authority to sell or buy, he must give notice to third parties with whom the agent has dealings; and

if he does not give notice to third parties of his revocation of the agent's authority, or unless he does what he can to make the revocation as notorious and generally known to the world as was the fact of the agency, he will be bound by the further dealings of the agent with persons who have not received notice of the agent's dismissal. As to the method of giving notice that an agent's authority has been revoked, or as to the character of notice required, the law does not prescribe any particular form of notice or method of giving it. Much will depend, in this matter, upon the prevailing custom or usage. Sometimes the notice is given by publishing in a newspaper, but more often by circular letter mailed to each of the wholesaler's customers. The latter method is to be preferred; for the wholesaler's books will usually show the names and addresses of all persons with whom the agent has had dealings, and a notice by mail may more surely reach the person intended to be notified of the revocation of an agent's authority. But whatever may be the method pursued, it must not be forgotten that actual notice of an agent's dismissal is necessary to protect his former principal from being bound by the agent's further dealing with persons with whom he formerly dealt.

Section 120.—WHOLESALE'S REPUDIATION OF AGENCY.—Circumstances occur where the wholesaler will dispute the agency altogether, and seek to repudiate the acts of one who has assumed to represent him in a transaction. In such cases, if the wholesaler does anything himself to ratify the act of the assumed agent, or accepts the result of his services, or acknowledges in any way his capacity as agent for himself, he will be bound, and his effort to repudiate the transaction will be of no avail. A repudiation of the act of one who assumes to act as agent, and whose agency is disputed, must be made promptly, as soon as the wholesaler learns of the pretended agency, and must be decisive and unequivocal. There was a case in Colusa County, which was passed upon by the Supreme Court of California in 1896, which illustrates very well the

conduct which will bind a wholesaler, and what will not be considered a repudiation of an assumed agent's authority. A man named Willis, who represented himself as the agent of J. K. Armsby Co., San Francisco, made a contract with J. H. Pope, of Colusa County, for the purchase of a lot of green fruit. The contract was in writing and was signed, "J. K. Armsby Company. By Frank W. Willis, Agent." Subsequently, and before the delivery of any fruit under the contract, Pope wrote to the J. K. Armsby Co. this letter: "Colusa, Cal., May 25, 1894. J. K. Armsby Co., San Francisco—Gentlemen: I have sold my green fruit to you, and have a contract signed to that effect, signed, 'J. K. Armsby Company,' by Frank Willis, as agent. Now, what I want to know, is F. W. Willis your agent for buying green fruit, and is the contract correct? Your immediate answer and oblige Yours truly, J. H. Pope." On the next day Pope received from the general manager of the company this letter: "San Francisco, May 26, 1894. John H. Pope, Esq., Colusa, Cal.—Dear Sir: We have yours of the 25th. Mr. Willis bought some apricots on our advice, but we are not aware he bought them in our name. We will handle them, however, and think there is no question on the money part of the transaction. The writer expects to visit your section within the next week or two, and will arrange the matter satisfactorily with you then. Yours truly, J. K. Armsby Co. Freeman." Afterwards a dispute arose, and the J. K. Armsby Company denied that Willis was their agent for buying the fruit, and claimed to have repudiated his agency. But the Supreme Court reviewed the facts, and said that the letter from the company was not frank, and did not answer the question put by Pope, whether Willis was the company's agent in the premises, by saying, in terms, whether he was or was not such agent; that the language used in the letter, and the assurances conveyed by it, authorized but one inference, that the contract was all right and the company would see it carried out. And the Supreme Court further said, that if the company intended to repudiate the transaction, it was its duty to do so explicitly, and in such terms

as to leave no room for doubt; and that Pope had a right to infer from the language of the letter that the contract made by Willis, instead of being repudiated, was in fact ratified by the J. K. Armsby Company; and that the company was positively and plainly informed by Pope's letter that he had a written contract signed in its name, and it was clearly the duty of the company, if it did not know the terms of the contract, to inform itself, before writing as it did, if it did not wish to be bound by the contract. It would have been a very easy thing to have asked Pope to send a copy of the contract, before replying to his letter; and not to have taken this simple precaution was negligence on the company's part, and precluded it from denying the effect of its assurances to Pope, which induced the latter to proceed and deliver his fruit under what he had a right to suppose was a valid contract. The case just referred to, like a great many others of like character, exemplifies the rule that an attempted repudiation of agency, or the contract of an agent made in the name of the principal, must be unequivocal and plain and clear, and must leave no room for a contrary inference on the part of the person with whom the agent deals. (Decided by the Supreme Court of California in the case of Pope vs. Armsby Co., reported in Volume 111, California Reports, page 159.)

Section 120a.—SALE OF SAMPLES.—A traveling salesman has no implied authority from the nature of his employment to sell the samples with which he is intrusted by his principal. Samples being essential and necessary to the performance of the salesman's work, no reasonable inference can arise that he is to dispose of them, for, if he does, he is left without available means for exhibiting the goods of his employer. A traveling salesman cannot sell his samples without express authority and instructions from his employer.

Manufacturer's Agent.

Section 121. — MANUFACTURER'S AGENT TO BUY OR SELL.—The law which applies generally to agents is also applicable to agents for manufacturers, whether such agents have the authority to buy raw material or to sell the finished product to the retailer. The agent for the manufacturer has such authority as his principal gives him, or such as may be reasonably inferred from a course of dealings with customers of which the manufacturer has knowledge and retains the benefits.

Section 122.—AGENT'S AUTHORITY TO BORROW MONEY.—Where a manufacturer establishes an agency in a city other than the place where the factory or the main office is located, the question sometimes arises as to what conditions or circumstances, if any, will justify the agent in borrowing money on his principal's account. The authority of an agent to borrow money for his principal may be expressly given, or it may be impliedly conferred upon him as an incident to the business which he undertakes to transact for his principal. When the power to borrow money is expressly given to an agent, the existence and extent of the power are, of course, to be determined by a construction of the instrument by which it is given. Where a general power to borrow money is expressly given, such power includes authority to give the lender the ordinary securities for the sum borrowed, such as bonds, notes, or collaterals. The power of an agent to borrow money on his principal's account may be implied, when the carrying on of the business intrusted to him absolutely requires the exercise of such power. An agent is presumed to have power to do whatever is necessary to effect the purposes of his agency. The necessity for borrowing money must, however, be shown, before the power to borrow can be inferred from the original employment of the agent. To justify this inference, the borrowing must be practically indispensable, and it is not sufficient that it was convenient,

or advantageous, or more effectual for the transaction of the business provided for. Nor is a party dealing with an agent entitled to assume the existence of any extraordinary state of facts, in order to bring the act of the agent within the scope of his apparent authority. Where it is absolutely necessary, in order to carry on the business with which the agent is intrusted, that he should borrow money on the credit of his principal, the authority to borrow will be implied. But a power given to an agent to draw or indorse checks, for and in the name of his principal, gives him no authority to overdraw his principal's account at the bank. Where the act of an agent, in borrowing money for his principal, was without original authority, the principal's ratification of the act cannot be inferred from the mere fact that the money borrowed went into the business of the principal or was beneficial or advantageous to him. But where an agent without original authority borrows money on behalf of his principal, and uses it in a manner advantageous to the principal, the ratification of the agent's act may be inferred from the silence of the principal after knowledge of all the facts, or from his promise to repay the money so borrowed.

Section 123.—AGENT SELLING GOODS OUT OF MANUFACTURE.—An agent authorized to sell new-pattern goods, to be manufactured, in addition to those the principal has already manufactured, or is willing to manufacture, has no authority to sell old-pattern goods, which have ceased to be manufactured, and could not be manufactured except at a loss. The very sending of an agent out to sell carries with it the idea that he is expected by the manufacturer to sell to his advantage; and this being so, it cannot be said that because he is expressly authorized to sell manufactured goods, he is also authorized to sell those that have ceased to be manufactured, and could not be except at a loss. An agent who has authority to sell new-pattern goods, to be manufactured, cannot be said to have authority to sell what is not being manufactured and will not be by his principal, because to manufacture it would

result in a loss, which is not the prevalent idea in any business. A reasonable man would not believe that a manufacturer would carry out any such contract, or that he intended to authorize his agent to make it.

Section 124.—SELLING GOODS FOR ONE YEAR MADE IN ANOTHER.—The mere fact that one acts as agent of a manufacturer in one year, in the sale of goods manufactured for sale for that year, does not make him an ostensible agent for the sale of the goods for the next year, unless such goods are continued to be manufactured or are in stock, and the principal wishes to sell them.

Section 125.—LIMITATION OF AUTHORITY.—A letter from a manufacturing firm to a customer, to the effect that for the next year they had certain new patterns of goods, which they would be ready to submit to the inspection of the customer at the end of the month, and that "our Mr. W. will call on you early in January, and talk to you about handling the line for next year," only authorized the agent to sell the new patterns of goods which were in the process of manufacture, or were offered to be manufactured, and the customer could not recover damages for the failure of the manufacturer to deliver old patterns of goods which the latter had ceased to manufacture.

Section 126.—SALE OF PROPERTY WHEN MANUFACTURED.—An agent authorized to sell the property of his principal when manufactured, has no authority to sell before it is manufactured.

Commission Merchants.

Section 127.—SELLING PROPERTY ON COMMISSION.—There is a common kind of agency exercised by commission merchants, who receive the property of others to sell on commission. But commission merchants, who

usually have possession of the property itself, and receive, not a salary, but a part of the selling price as their compensation, and usually receive few if any instructions from the consignor of property to be sold on commission, are to be considered from a peculiar point of view in many of their business relations.

Section 128.—INSURANCE OF CONSIGNED PROPERTY.—A commission merchant, unless he has received contrary instructions, has authority to insure property consigned to him uninsured.

Civil Code, Section 2368.

Section 129.—AUTHORITY TO SELL ON CREDIT.—Unless specially restricted to sales for cash, a commission merchant has authority to sell on credit any property intrusted to him for sale; but such authority does not extend to such things as it is customary to sell for cash. Therefore, even if he has not received any instructions to the contrary, a commission merchant will not have authority to sell on credit any commodity consigned to him for sale which it is the custom at the place where he does business to sell for cash.

Civil Code, Section 2368.

Section 130.—PLEDGE OF CONSIGNED PROPERTY.—A commission merchant has no power to pledge or mortgage property consigned to him, and cannot trade the consigned property for other property.

Civil Code, Section 2368.

Section 131.—AUTHORITY OF PARTNER OR SERVANT.—The partner or servant of a commission merchant may have the same authority to deal with the consigned property as he has, but he cannot delegate his authority to any person in an independent employment.

Civil Code, Section 2368.

Section 132.—INSTRUCTIONS FROM CONSIGNOR.—If a consignment of property is received by a commission merchant, and the consignor at the same time sends certain instructions for him to follow, regarding any matter connected with the sale, it is the duty of the merchant to follow such instructions if possible, notwithstanding any advances he may have made to his principal upon the property consigned to him. But if he has an opportunity to sell at the market price, and the consignor forbids him to do so, he need not follow such instructions, unless his advances are repaid him; and if his advances are not repaid him, he may proceed to sell for his own reimbursement, after giving to the consignor reasonable notice of his intention to do so, and of the time and place of sale.

Civil Code, Section 2027.

Section 133.—CANNOT EXTEND CREDIT.—When property is sold by a commission merchant on credit, the sale must be made on such credit as is usual, but he has no power to extend the credit agreed upon.

Civil Code, Section 2028.

Section 134.—GUARANTY OF CERTAIN PRICE.—Where the commission merchant guarantees that the goods shall yield to the consignor a fixed price, he cannot by selling for less, or by deducting his commission, avoid his liability to make his returns to the consignor amount to the price agreed upon. The value of the goods, as it turns out to be, is not material. He has fixed his own liability, and his guaranty of a certain price, and his liability to the consignor for so much, becomes absolute whenever he makes a sale, whether for cash or upon credit.

Section 135.—INSTRUCTIONS TO “SELL ON ARRIVAL.”—Where a consignment of property is made to a commission merchant, with instructions to “sell on arrival,” the merchant is bound to follow the instructions and sell for the price the property will command, and if he does

not do so, but holds the property and neglects to sell on arrival, he will be liable for any losses sustained by the consignor occasioned by a fall in price. He cannot excuse himself by saying that the market was dull, for he had received his instructions, and it was his duty to sell, if the property might have been disposed of even at a reduced price. It was his duty to sell on arrival, no matter at what loss.

Section 136.—SPECIAL PROPERTY IN CONSIGNMENTS.—A commission merchant to whom goods have been consigned for sale, has a special property in the goods, by virtue of his position with relation to them. For many, if not for most purposes, he is treated as the owner of the goods. He has possession; he may sell and make shipments; he may collect the purchase price; and, in fact, he may deal with the property as though it were his own, in the absence of explicit instructions limiting his authority. And it follows, necessarily, that any limitation upon his general authority must be brought to the notice of those with whom he deals, or his principal will be bound, even though he should go outside his instructions.

Section 137.—IN WHOSE NAME INSURANCE MAY BE PUT.—Insurance on property, consigned to a commission merchant for sale, may be for the benefit and in the names of both merchant and consignor. The merchant is not bound to insure, unless he has received orders to do so; but he may insure, in his own name, or in the name and for the benefit of his principal.

Section 138.—RESPONSIBILITY OF PURCHASER.—It is the duty of a commission merchant who sells on credit to make strict inquiry as to the responsibility of the purchaser; and if he neglects to do so, and a loss occurs, he will be liable for it to his principal.

Section 139.—RIGHT TO COMMISSIONS.—If a commission merchant properly performs his duties, he will

always be entitled to his commission in such sum as has been agreed upon between himself and principal; and if there has been no agreement as to the amount of the commission, then for a reasonable amount, which may depend upon usage or custom. But if the merchant be guilty of gross misconduct, or if he perform his duties in such a negligent manner as to prevent any benefit to the principal, he will not be entitled to receive his commission. If expenses are occasioned by his own negligence, he cannot recover them; and he will not be entitled to the difference, when through his own negligence the proceeds of the sale are not equal to the expenses.

Section 140.—MAY SELL IN HIS OWN NAME.—

Having a special property in goods consigned to his care, a commission merchant may sell in his own name; and when the purchaser pays him, the former is discharged from all liability to the real owner of the goods. Whenever the commission merchant sells in his own name, he may sue the purchaser in his own name for the price.

Section 141.—TAKING PROMISSORY NOTE IN PAYMENT.—When it is proper for a commission merchant to sell on credit, and he takes the promissory note of the purchaser in payment, payable to himself, he takes it in trust for his principal, and subject to his order.

Section 142.—LIEN OF COMMISSION MERCHANT.—Having possession of the goods, and a special property in them, the commission merchant has a lien upon them and their proceeds, and the securities received upon their sale, for his expenses and commissions, for his advances to his principal, and usually for the balance of his general account with his principal.

Section 143.—AUTHORITY AS GENERAL AGENT.—Where general authority is given to a commission merchant to buy and sell for the principal, he is considered as a general agent, and his acts will be binding on his principal, even where he has violated his private instructions.

Section 144.—CARE TO BE TAKEN OF GOODS CONSIGNED.—A commission merchant is bound to keep the goods intrusted to him with the same care as a prudent man would bestow upon them, if they were his own. He must use ordinary diligence in the care and preservation of the property while it is in his hands; and for any loss occasioned by his neglect of his duty in this respect he will be personally liable to his principal.

Section 145.—MUST NOT MIX GOODS WITH ANOTHER'S.—A commission merchant has no right to mix the goods received from one person with the goods of another.

Section 146.—DUTY TO RENDER ACCOUNTS.—A commission merchant is bound to give the unbiased use of his own discretion and judgment to his principal, and he must keep and render to his principal true accounts of his transactions, and he must keep the principal informed of all facts material to his interests; and if losses occur through neglect of these duties, he will become personally responsible to the principal.

The Legislature of 1909 passed a law providing that "every commission merchant, broker, agent, factor, or consignee, who shall wilfully and corruptly make, or cause to be made to the principal or consignor, a false statement as to the price obtained for any property consigned or entrusted for sale, or as to the quality or quantity of any property so consigned or entrusted, or as to any expenditures made in connection therewith, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five hundred dollars and not less than two hundred dollars, or by imprisonment in the county jail not exceeding six months and not less than ten days, or by both such fine and imprisonment."

Act of the Legislature, approved March 20, 1909.

Another law was passed relating to the duty of a commission merchant to render an account to the consignor, as follows:

"It is hereby made the duty of every commission merchant, broker, factor, or consignee, to whom any property is consigned or entrusted for sale, to make, when accounting therefor or subsequently, upon the written demand of his principal or consignor, a true written statement setting forth the name and address of the person or persons to whom a sale of the said property, or any portion thereof, was made, the quantity so sold to each purchaser, and the respective prices obtained therefor; provided, however, that unless separate written demand shall be made as to each consignment or shipment regarding which said statement is desired, prior to sale, it shall be sufficient to set forth in said statement only so many of said matters above enumerated as said commission merchant, broker, factor, or consignee may be able to obtain from the books of account kept by him; and that said statement shall not be required in case of cash sales where the amount of the transaction is less than fifty dollars. Any person violating the provisions of this section is guilty of a misdemeanor."

Act of the Legislature, approved April 22, 1909.

Real Estate Agents.

Section 147.—EMPLOYMENT MUST BE IN WRITING.—The employment of a real estate agent, giving him authority to sell land for another, is required by the law of this state to be in writing. The contract or some memorandum of it must be in writing. The contract or memorandum need not state that the agent is to receive a commission for his service, but it must show in writing that the agent was employed.

Civil Code, Section 1624.

Section 148.—VERBAL CONTRACT INVALID.—A verbal contract for the sale of real property, made by an agent who has no written authority from another, is invalid. And if the agent without authority in writing allows an intending purchaser to take possession of the property, such

possession will only be held at the will of the owner, who can bring an action for unlawful detainer against the party in possession. Verbal authority given by one to another, to contract with reference to his land, is in law no authority. (Decided by the Supreme Court of California in the case of Nason vs. Lingle, which decision is printed in Volume 27, California Decisions, page 970.)

Section 149.—WHEN LETTER NOT SUFFICIENT.

—A letter from the owner of real estate is not sufficient to enable the agent to recover a commission, unless it is clearly seen that an employment was intended, from the language used in the letter itself. A real estate agent in Oakland received a letter which read as follows: "Walter E. Logan: Sir—If you can purchase N. W. corner of 13th and Franklin streets, 75x100, for \$42,000, I think we would be ready to purchase same by Monday next. J. C. McMullen." Logan sued for a commission, producing the above letter as evidence of his employment in writing. The District Court of Appeal decided that the letter was not sufficient memorandum of employment, under the law. The Court says that it does not purport to be an employment of the plaintiff as a broker or agent for the purchase of the real estate, but is rather to be construed as merely a proposition to him to ascertain whether it could be purchased at the designated price. But whatever construction is to be given to its terms, inasmuch as the plaintiff did not purchase the property, or obtain from the owner an agreement for its sale which could be enforced by the defendant, the latter did not become liable to him for any service as broker or agent in the matter. It was his duty to procure from the owners and deliver to the defendant a valid contract of sale which could be enforced by the defendant; or, if he could obtain from the owners a verbal agreement to make the sale, he should have brought the owners and the defendant together, thus giving the latter an opportunity to secure a written contract. The letter alone was not sufficient to show an employment of the agent, or to give him any right to commissions. (Decided

by the District Court of Appeals, First District, in the case of Logan vs. McMullen, which decision is printed in Volume 87 of the Pacific Reporter, page 285.)

Section 150.—FORM OF WRITTEN AUTHORITY TO AGENT.—The following is a form in writing authorizing an agent to sell land:

San Francisco, Cal.,....., 191..
 I hereby authorize and employ....., of
, State of California, to sell the following
 described real estate belonging to me, situate in the County
 of....., State of California, to-wit

 (Here describe property.)

 for the sum of \$.....
 This authority is for the term of.....days from
 date, and shall be exclusive.
 I agree to pay to said.....,
 as his commission for making a sale of said property, the
 sum ofper cent of the selling price.
 Ten days to be given for examination of abstract of title,
 which I agree to furnish.
 Time is of the essence of this instrument.

.....
 Owner.

Section 151.—RIGHT OF AGENT TO COMMISSIONS WHEN PROPERTY WITHDRAWN FROM SALE.—Where the contract of employment provides that if the owner shall before the expiration of the contract withdraw the property from sale the agent will be entitled to his commissions, the agent is entitled to recover his commissions as a debt due from the owner, upon his withdrawing the property from sale within the time named in the contract. The owner who withdraws the property from sale will be liable for the commissions, even though the agent has not found a purchaser for the property. For by his contract he gives the agent the opportunity to earn the commissions within a certain time; and if, during the term,

he withdraws the property from sale, he thus deprives the agent of the benefit of the unexpired time, and may prevent his opportunity for making a sale.

Section 152.—WHEN CONTRACT FULFILLED AND COMMISSION EARNED.—A real estate agent is never entitled to commissions for unsuccessful efforts. When he undertakes to find a purchaser, the risk of failure is wholly his. The reward comes only with his success. That is the plain contract and contemplation of the parties. The agent may devote his time and labor and expend his money with ever so much devotion to the interest of his employer, and yet if he fails, if, without effecting an agreement or accomplishing a bargain, he abandons the effort, or if his authority is fairly and in good faith terminated, he gains no right to commissions. He loses the effort which was staked upon success, and in such event it matters not that after his failure and the termination of his agency, what he has done proves of use and benefit to the principal. But, on the other hand, if an agent authorized to negotiate a sale produces, within the time limited by his contract, a purchaser, ready, willing, and able to purchase upon the terms stated in the contract, his service is completed and he is entitled to his commissions. He is entitled to his commissions, notwithstanding the owner backs out, and refuses to sell to the purchaser produced.

Section 153.—WHAT IS SUFFICIENT AUTHORITY FROM CORPORATION.—Where an individual gives authority to a real estate agent to sell his land, any writing, in any form, whether memorandum, agreement, or letter, or telegram, which expresses on its face the employment of the agent to sell, is a sufficient authorization. But in the case of a corporation the law is entirely different. A corporation can only act by and through its officers, and a writing, though signed by its President, Cashier, or Secretary, or all three together, stating that a real estate agent had been employed to sell lands owned by the corporation,

would not give any authority to the agent whatever. Corporations act by their officers, and the officers must transact their business in the manner provided by law, and in no other way. Therefore, a corporation which has land to sell, and wishes to employ an agent to make the sale, can only act upon the matter through its Board of Directors, when duly assembled, by a resolution duly passed and recorded. There must be a quorum of the Directors present, and a majority of the Board must vote in favor of the resolution to employ the agent, and the "aye" and "no" vote must be entered in the minutes. The agent should then be furnished with a copy of the resolution, which will be a sufficient indication of his authority. When the By-Laws of the corporation provide that notice to Directors of meetings of the Board be given in a certain manner, notice must be given strictly in accordance with the By-Laws, or the resolution passed will not be valid. It will make no difference that all the Directors, without the formality of a meeting, sign their names to a written authorization to the agent. Such writing would be worthless. Under it the agent would have no legal authority to deal with the land. Under it, he could neither make a valid contract of sale, nor collect any commissions from the corporation for his services. The Directors, the President, the Secretary, the Cashier, the stockholders, no one of these has power, by virtue of his office or investment, to employ an agent to buy or sell for the corporation, nor have all together the power which neither has separately. The powers of a corporation must be exercised, and its property controlled, by its Board of Directors; the decision of the majority of the Directors, made when duly assembled, being valid as a corporate act. The Board must be duly assembled, and their transactions should be recorded. The Directors when not acting as a Board have not the necessary power to employ an agent. The absence of a resolution of the Board renders any writing purporting to employ the agent, though signed by the Directors or other officers, illegal and invalid.

Civil Code, Sections 305, 308, 377.

Section 154.—RATIFICATION OF UNAUTHORIZED EMPLOYMENT BY CORPORATION.—Where an agent acts for a corporation, without having received proper authorization by resolution of the Board of Directors, the corporation may yet ratify the act of the agent in making a sale; provided, the ratification must be in the same form and manner as the original authorization should have been, that is, it must be by a resolution of the Board lawfully adopted.

Section 155.—OPTION TO AGENT TO SELL FOR COMMISSION ABOVE A FIXED PRICE.—The owner of land may lawfully make a contract authorizing real estate agents to sell the land for a special sum and agreeing to pay them a commission of whatever sum they realize above that amount. Such a contract is binding upon both parties. It confers an option upon the agents, and a sale by the agents under such a contract is, as the law regards it, a sale made by them in the capacity of vendors upon their own account, and not strictly for the account of the owner of the land. If the agents find a purchaser, under such a contract with the owner, and receive a deposit to bind the bargain, but the sale does not go through because a title insurance company will not insure the title to the land, the owner has no claim on the deposit, and the agents have a right to refund the money to the intending purchaser. Such option to real estate agents, with relation, also, to a deposit received upon a purchase which afterwards failed to go through, was the subject of a Supreme Court decision in this state, in a San Francisco case. C. H. Robinson and C. B. Hobson executed to the real estate firm of Easton, Eldridge & Co. the following instrument: "We hereby authorize Easton & Eldridge, for us and within five days from date hereof, and until this authority is canceled in writing by us, to sell for the sum of \$10,000—net dollars—the following described property situated in the City and County of San Francisco, State of California, to-wit: All of block 935, outside lands; and we will pay the said Easton

& Eldridge a commission of all over said sum of \$10,000, net, for which they may sell said property with our consent. Witness our hand and seal this twenty-fourth day of August, A. D. 1887, C. B. Hobson, C. H. Robinson." The real estate firm found a purchaser, receiving from him \$1,050 as a deposit on the purchase price of \$10,500, with 30 days allowed for search of title, and upon the condition that the Title Insurance Company would insure the title. The Title Insurance Company refused to insure the title, and Easton & Eldridge repaid the deposit to the purchaser. Then Hobson and Robinson commenced a suit against the agents for the deposit, claiming that the money was received for their account, and that the agents had no right to pay it back to the purchaser. The Supreme Court decided the case in favor of Easton, Eldridge & Co., the decision of the Court stating, that the relation of the defendants to the plaintiffs was not that of a mere agent; that while their authority to sell the land was derived from the plaintiffs, yet the sale was to be made for their own account and benefit, as well as for that of their principals. By the terms of the authorization from their principals, Easton, Eldridge & Co. acquired such a right to a portion of the proceeds of sale as to enable them lawfully to make a contract of sale upon terms of their own choosing. The principals, in effect, said the Supreme Court, gave to Easton, Eldridge & Co. an option for five days to endeavor to sell the block of land for whatever sum they could obtain, and upon whatever terms they might make, provided they should receive therefor the sum of \$10,000, and agreed that the agents should have whatever sum they could realize above that amount. The relation thus created between them was rather that of a vendor and purchaser under a contract of sale than one of principal and agent, and a sale by the agents under such a contract was in the capacity of a vendor upon their own account, and not solely for the account of their principal. The agents were entitled to all the proceeds of the sale in excess of \$10,000, and therefore they had the right to make the sale upon such terms as in their judgment

would enable them to realize the highest price for the land. Upon a sale by them, the owners were entitled to the immediate payment of the \$10,000, but the agents could sell the land either for cash or upon time, as they might choose, so long as the owners received their money, and the terms of sale made by the agents did not require any ratification by the owners. And upon the disapproval of the title by the Title Insurance Company, the Supreme Court decided, the purchaser had the right to demand, and these agents had the right to refund, the money that had been received by them as a deposit upon the sale. (Decided by the Supreme Court of California, in the case of Robinson vs. Easton, Eldridge & Co., reported in Volume 93 of California Reports, page 80.)

Section 156.—FAILURE OF SALE BY DEFECTIVE TITLE.—Where an agent is employed to sell land, the title to prove good or no sale, and he finds a purchaser, ready, able, and willing to buy upon the agreed terms, and the title proves to be defective, the agent is nevertheless entitled to his commissions. The failure of the sale by reason of the defective title is not the fault of the agent, but is the fault of the owner, and he must pay the agent's commissions. (Decided by the District Court of Appeals, in the case of Justy vs. Erro, which decision is printed in Volume 13, California Appellate Decisions, page 27.)

Section 157.—FAILURE OF OWNER TO REMOVE DEFECTS.—Where real estate agents enter into a contract with an intending purchaser, acknowledging the receipt of a deposit, and stipulating that the title is to prove good or no sale, in which case the deposit is to be returned, and such contract is ratified by the owner of the land, even though not in the first place authorized, the owner is bound by it; and if it appears that there is a defect in the title, it is the duty of the owner to remove the defect and perfect the title within the time limited by the contract, and if he does not do so, the purchaser will be discharged from his

obligation, and will be entitled to the return of his money paid on deposit.

Section 157a.—EVASION OF CONTRACT BY OWNER.—If, within the time limited in a contract for the sale of real estate on commission, the broker has produced a purchaser, who is ready, willing and able to purchase upon the terms prescribed, the principal cannot evade payment of the broker's commission by then refusing or neglecting to consummate the sale, or *by changing the terms*, or by selling the property to another, or by negligently dealing with the proposed purchaser so as to lose the benefit of the sale.

Refusal of Vendor's Wife to Join in Conveyance.—The refusal of the principal's wife to join in the conveyance will not avoid payment of the commission.

Refusal of Vendee to Purchase.—The refusal of the purchaser to complete the sale on account of false representations made by the principal will not defeat payment of the commission.

Personal Conduct of Sale Unnecessary.—It is not necessary that the broker should personally have conducted the negotiations between his principal and the purchaser leading to the sale, nor that he should have been present when the bargain was completed, or even that the principal should, at the time, have known that the purchaser was one found by the broker.

While it is indispensable, it is sufficient that the broker's efforts were the procuring cause of the sale; that through his agency, the purchaser was brought into communication with the seller, although the parties negotiated in person.

(Decided by the District Court of Appeals, in the case of *Justy vs. Erro*, which decision is printed in Volume 13, California Appellate Decisions, page 27.)

Section 158.—RATIFYING AUTHORITY OF BROKERS.—The owner may ratify by his subsequent conduct

the unauthorized act of the brokers in stipulating that the title shall be good or no sale. The action of the owner of the land in agreeing to the contract of his brokers with the intending purchaser, and in accepting him as the purchaser of the property upon the terms of such contract, is a waiver of objection that the brokers exceeded their authority in providing in the contract that the title should prove good, or that there would be no sale. And in this case it is not necessary that such ratification shall be in writing as between the owner of the land and the brokers, as it relates to no interest in the land, in so far as it affects the brokers, but only to the owner's obligation to pay them their commission when earned.

Section 159.—WHAT IS GOOD TITLE.—A title to land, to be good, should be free from litigation, palpable defects, and grave doubts; and it should consist of both legal and equitable titles, and should be fairly ascertainable from the records. A perfect title is one that must be good and valid beyond all reasonable doubt. Whether the title in any particular case is good or not is a question which it is often difficult to determine, and one upon which lawyers and judges often disagree.

Section 160.—SALE BY OWNER.—A party who employs a real estate broker to sell his land may, notwithstanding, negotiate a sale himself; and if he does so without any agency of the broker, and before the latter has procured a purchaser, he is not liable to the agent for commissions. But, as already stated, the commission of a real estate agent is earned by finding a purchaser ready, willing, and able to enter into a valid contract for the purchase upon the terms fixed by the owner; and having introduced such a one to the owner, the agent cannot be deprived of his right to commissions by the owner negotiating a sale himself.

Section 161.—COMMISSIONS UPON SALE OR EXCHANGE BY OWNER.—Where by the terms of a contract for the sale of real estate through brokers, they are authorized to sell the property for the owners at any time within a year, and it is agreed that the commission shall be paid if the owners should withdraw the property from sale or effect a sale in any way during the year, the brokers are entitled to commissions upon sale or exchange of the land by the owners themselves, and need not show that they had procured or could have procured a purchaser within the time fixed in the contract. The sale or exchange of the land by the owner himself puts it beyond the power of the agent to thereafter make a sale, and this entitles the agent to the same commissions he would have earned if he had sold the land for the amount realized by the owners.

Section 162.—SALE BY OWNER THROUGH ANOTHER AGENT.—Where by the terms of an agreement conferring a sole agency for the sale of land, the principal agrees to pay to the agent the same commission as if he had procured a purchaser, if he should sell or agree to sell the land or part of it to any one in the twelve months next ensuing, an immediate obligation to pay the commission is created against the principal by virtue of the contract, when the principal himself effects a sale through another agent within that period. The agent first appointed has an immediate right of action to recover his commissions. And the owner cannot deduct from the commissions agreed to be paid to his exclusive agent the amount of commissions paid by him to another agent for effecting a sale.

Section 163.—MISREPRESENTATION BY OWNER.—Where by means of a fraudulent misrepresentation of the principal that he had not sold the land, and had changed his intention as to selling it, the agent having an exclusive right of sale was induced to accept part payment of his commission in satisfaction of the obligation of the principal, he is entitled to rescind the agreement for satisfaction, and recover

the full amount of commission which had previously matured in his behalf, by reason of a sale effected by the principal of which he was ignorant.

Section 164.—WHAT CONSTITUTES A SALE BY OWNER.—It is not necessary, in order to constitute a sale by the owner sufficient to entitle the agent to his commissions, that the owner should sell for cash, or upon the same terms the agent was authorized to effect, or that he should make a conveyance, or that a legal title should pass to his purchaser. In a case decided by the Supreme Court of California, Shainwald, Buckbee & Co. sued M. K. Cady for commissions on the sale of the townsite of Agua Caliente. In the written agreement given by Cady to the agents, authorizing them to find a purchaser, it was stipulated that if Cady himself made a sale of the property within the term of the agreement, the agents were to be allowed two per cent commissions upon the amount of such sale; Cady sold the land, partly on credit, and the purchaser afterwards failed to make stipulated payments, and surrendered the contract and delivered up possession of the land; and at the time when Shainwald, Buckbee & Co. sued Cady for their commissions, he had again possession of the land. The Supreme Court decided that Shainwald, Buckbee & Co. were entitled to their commissions, because Cady had absolutely placed it out of their power to make a sale of the property at all. Cady had received a portion of the purchase price, and given up possession of the property; and although the purchaser failed to keep possession, and surrendered the contract, and turned the possession back to Cady, the Supreme Court said that a sale was consummated sufficient in law to make Cady liable to the agents under their agreement. (Decided by the Supreme Court of California in the case of Shainwald, Buckbee & Co. vs. M. K. Cady, reported in Volume 92, California Reports, page 83.)

Section 165.—LIABILITY OF AGENT UNDER CONTRACT TO SELL FOR SPECIFIED AMOUNT.
—Where an agent accepts real property for sale, and binds

himself in writing to sell the property within a certain time for a certain amount, and to accept all over that sum as his compensation, he makes himself absolutely liable to the owner. And if he fails to make a sale for the amount stated in his contract, within the term stipulated, the owner can sue him for damages. The owner will be entitled to recover from the agent as damages the difference between the actual market value of the land, at the end of the term within which it was to be sold, and the amount the agent bound himself to realize from it for the owner.

Section 166.—LIABILITY OF OWNER TO AUCTIONEER.—One representing himself as the owner of real estate, who employs an auctioneer to sell the same under an agreement that, in the event of a sale, the auctioneer shall receive for his services a percentage on the amount bid, cannot, after a sale by the auctioneer, avoid paying him for his services because the purchaser refuses to take the property, owing to a real or alleged defect in the title. The auctioneer in such a case is entitled to compensation for his services, unless there is a special agreement that it shall depend on the consummation of the sale.

Section 167.—WHAT AGENT MUST PROVE IN SUIT TO RECOVER COMMISSIONS.—Where an agent is compelled to sue for his commissions, for effecting a sale of real estate, to entitle him to judgment in his favor, he must show that he was employed by or on behalf of the owner to make the sale, and that his authority, or some note or memorandum thereof, was in writing, subscribed by the party to be charged, or by his authorized agent. And before an agent can be said to have earned his commission, it must also be shown that he produced a purchaser, who was ready and willing and able to make the purchase on terms satisfactory to his employer, and that he was the efficient agent or procuring cause of the sale. The duty assumed by the broker is to bring the minds of the buyer and seller to an agreement for a sale, and the price

and terms on which it is to be made, and until this is done, his right to commissions does not accrue. It must further appear that the broker performed the duty assumed by him within the time limited in his contract, or within such extension of time as may have been granted by his employer. If he failed to do that, he is not entitled to the commission, even though he made efforts to sell the property, and first called it to the attention of the party who subsequently made the purchase, unless the delay was caused by the negligence, fault, or fraud of the owner.

Civil Code, Section 1624.

Section 168.—AGENT'S MISTAKE AS TO TITLE.

—When the agent has received a deposit, and the purchaser afterwards claims that the title is not good and demands the deposit back, the agent, if he be a simple agent to sell, will take his own chances if he returns the deposit to the purchaser. For if the owner insists upon the purchaser taking the lands, and litigation follows, and it is decided that the title to the land was in reality good, the agent will be compelled to pay the amount of the deposit to the owner, less his commissions, even though he has already returned the deposit to the purchaser; and he will not be protected by the fact that he obtained the opinion of an attorney, and acted upon it in good faith, that the title was not good, before returning the deposit. His liability for the deposit to his principal will depend upon the fact, whether the title was or was not good, and not upon what he or anybody else may have thought about it, and the only way to determine the matter definitely is by a judgment of a court.

Section 169.—REPUDIATION OF CONTRACT BY VENDOR.—Real estate agents may recover from their principal the commission agreed upon for a sale secured by them, if the proposed contract of sale was not beyond their authority, though the vendor refuses absolutely to consummate the purchase or to negotiate with reference to it. It is immaterial whether the power conferred upon real estate

agents is to sell or merely to secure a purchaser, so far as their right to recover the agreed commission is concerned, if they comply with their part of the contract in procuring a purchaser, to whom the vendor refuses to convey.

Section 170.—TERMS OF PAYMENT, AND REFUSAL TO ACCEPT TENDER.—A contract between a vendor and a real estate agent, providing that the terms of payment are to be as buyer and seller may agree, does not impose upon the agent the duty of selling for cash, even if it be construed as reserving to the vendor the right to agree upon the terms in person; and there can be no reasonable objection to the terms of payment as a defense to the recovery of commissions, if when cash was tendered by the purchaser, no objection was made on account of the terms. When the vendor has refused to accept the tender of the purchase money, and repudiated the contract made by his real estate agent with the purchaser, he cannot defend against the payment of commissions on the ground that the purchase money was not paid.

Section 171.—HUSBAND GIVING AGENT PROPERTY OF WIFE TO SELL.—Where a vendor gives to real estate agents the property of his wife to sell as his property, and describes it in the contract, and they procure a purchaser without knowledge that the title was not in the vendor, his want of title cannot affect their right to recover their commissions from him.

Section 172.—WHAT CONSTITUTES FINDING A PURCHASER.—To find a purchaser means more than to procure some one who will offer to negotiate for the purchase. It implies the production of one who is not only ready and willing to comply with the terms of the purchase, but who has also the present ability to consummate it, and to comply with all of its terms, and who is also willing and ready to do all the acts that may be required to make an actual purchase of the land. To produce one who makes an

offer to purchase, and who is without means, or who is not in condition to comply with the terms of the sale, and against whom a claim for damages resulting from a failure to perform the contract of purchase could not be enforced, does not constitute the finding of a purchaser within the meaning of the law; and the mere statement by one who is produced that he is ready and willing to make the purchase, is not sufficient, for he must satisfy the owner that he has the ability to do so. Upon the production of such purchaser, if the transaction is not to be consummated by an immediate delivery of the deed and payment of the purchase price, the owner has the right to demand that a valid, enforceable contract for the purchase of the land shall be executed by him. The owner may, however, waive the execution of such contract; as, if after the broker has introduced the purchaser to him, he himself assumes to prepare a contract, or to deal with the purchaser upon other terms, or accepts a verbal obligation from him.

Section 173.—OWNER AND PURCHASER NEED NOT BE BROUGHT FACE TO FACE.—It is not essential, to entitle the agent to his commissions, that he should bring the owner and purchaser face to face. If the agent secures from the purchaser a valid contract, according to the terms of his agreement with his principal, and a deposit of money if required, and the purchaser is really ready, willing, and able to complete the purchase according to the terms proposed, the agent has performed his duty as fully as though the parties had been brought together in person.

Section 174.—AMOUNT OF COMMISSIONS.—The amount of compensation or commissions which a real estate agent shall receive will in all cases depend upon his contract with the owner, if the contract makes any provision in respect to it; and, in the absence of any agreement on the amount of commission, it will be measured by the value of

the service rendered, and the agent will be entitled to a reasonable compensation, to be ascertained from all the circumstances.

Section 175.— PREVENTION OF SALE BY OWNER.—If the owner in fact has a good title, but goes to the purchaser, or to the purchaser's attorney, and makes representations for the purpose of defeating the sale, and makes the intended purchaser believe that the title is bad, and the latter refuses to proceed with the transaction in consequence, the broker is entitled to his commission.

Section 176.—WHEN PURCHASER AND OWNER ARE NOT BROUGHT TOGETHER, PURCHASER MUST SIGN A WRITTEN CONTRACT.—If the agent does not produce the purchaser before the owner in person, ready and willing to enter into a contract, the purchaser must sign a written contract, and this written contract must be delivered by the agent to the owner. This important rule as to the duty of the agent was stated by the Supreme Court of California in a case where B. M. Gunn, a real estate broker, sued the Bank of California for commissions. The Superior Court of San Francisco decided that Gunn was entitled to commissions, but the Supreme Court set the judgment aside, and decided that upon the facts the broker was not entitled to commissions. Gunn had a contract with the bank, by which he was to sell certain property within a certain time for \$41,000, and was to receive \$1,000 as his commission for making the sale; he found one Keating, within the time, who was ready, able, and willing to purchase at the price of \$41,000, but his agreement with Keating was oral only, and Keating signed nothing, although he orally agreed to buy for the price stated and paid \$500 on account, and took a receipt signed by Gunn alone; the receipt recited that Keating was to have twenty days within which to examine the title to the property. On the same day Gunn sent to a Mr. Brown, who was acting for the bank in the matter, the following letter:

"Dear Sir: I beg leave to inform you that I have this day sold the lot and improvements known as the Golden Gate Flour Mill Property for the sum of forty-one thousand dollars, less one thousand dollars commission, and have given purchaser twenty days to examine title to same. Please send me abstract and approval of sale, and oblige." This letter was returned by Brown with this endorsement: "I herewith approve above sale. The Bank of California. Thomas Brown." Keating refused to complete the sale, on account of a defect in the title. Keating was financially able to pay the price he orally agreed to pay for the land, but he signed no contract which bound him to complete the purchase in case the title to the land was perfect, and Gunn did not introduce him to Brown, or inform Brown who was the purchaser referred to in his letter, and Brown did not learn the intended purchaser's name until about the time the title was rejected by Keating's attorney. In the suit brought by Gunn for the \$1,000 commission, the Supreme Court held that, as Keating had not signed any contract, and had not been produced before Brown as the purchaser, Gunn had not "found a purchaser," as the law reads, and was not entitled to the commissions. And the Supreme Court, in its decision of the case, said: "The question here is, What is 'finding' or 'producing' a purchaser within the meaning of the law? Is it sufficient for a broker to merely find a person financially able, and who verbally agrees with him to purchase upon the terms of the vendor, and makes a deposit, but who neither signs a binding agreement to purchase upon the terms of the vendor, nor is produced before the vendor as a person ready and willing to enter into such a contract? It seems to us very clear that this question must be answered in the negative. The contract of the broker is to negotiate a sale, that is, to procure a valid contract to purchase, which can be enforced by the vendor if his title is perfect; or if he does not procure such contract, to bring the vendor and the proposed purchaser together, that the vendor may secure such a contract, unless he is willing to trust to an oral agreement. This contract on the part of the broker is complete, when he

delivers or tenders to the owner a valid written contract, containing the terms of sale agreed on, signed by a party able to comply therewith, or able to answer in damages if he should fail to perform. This is all the agent can do, and when it is done he is entitled to his commissions. But the necessity of a written contract of sale may be rendered unnecessary if the agent bring the vendor and vendee together, and the latter is able and willing, and offers to complete the contract, provided the vendor will make the conveyance. In such a case the agent has done all that he can do, and if the vendor under such circumstances refuses to complete the sale, he nevertheless will be compelled to pay the agent his commissions. The object of the vendor is to effect a sale of his property, and when the real estate broker produces a contract executed by a solvent purchaser, he is then entitled to pay for his services, whether the trade is finally consummated or not, because if the vendee refuses to take the property, the vendor holds the contract, which renders the vendee liable for all damages (including commissions paid by the vendor to the broker) for a failure to comply. The right of Gunn to the agreed compensation depends upon the performance of his contract to procure a purchaser, and as he did not do this, and defendant neither waived nor prevented such performance, he has not earned his commission." (Decided by the Supreme Court of California in the case of *Gunn vs. Bank of California*, reported in Volume 99, California Reports, page 349.)

Section 177.—WHEN OWNER MUST RETURN MONEY PAID ON CONTRACT.—A vendor under contract for the sale of land, who has received a part of the purchase price at the time of the execution of the contract, cannot rescind the contract on account of the non-payment of the balance of the purchase price on the day stipulated for in the agreement, without returning or offering to return to the vendee the money that he has received on account of the contract. When a contract of sale and purchase of lands is abandoned or rescinded by the parties, the vendee, though

in default, may recover back installments of the purchase-money paid, less the actual damage to the vendor occasioned by his breach of the contract.

Section 178.—AGREEMENT BETWEEN AGENTS TO CO-OPERATE IN SELLING.—Real estate agents may co-operate in the selling of land, for a share of the commissions, and such agreement between themselves need not be in writing. The agreement will be sufficient, if made orally, and the courts will enforce it. An agreement between brokers, to co-operate in making sales of real estate, and to share the commissions, is not required by law to be in writing. The authority from the owner to sell must be in writing, but the agreement between the brokers to co-operate in making the sale may be made verbally. (Decided by the District Court of Appeals of California, in the case of *Saunders vs. Yoakum*, which decision is printed in Volume X of the California Appellate Decisions, page 243.)

Section 179.—AUTHORITY TO SELL ON CREDIT.—When a real estate agent receives authority from the owner to sell land on credit, the time of credit specified in their agreement is the measure of the agent's authority. Where the agreement authorizes the agent to sell on credit, but does not specify the time of credit, the agent must use his discretion in the matter, and has authority to give the purchaser a reasonable credit; and the credit given, to be reasonable, must be such as is usual and customary on sales of real estate in the particular vicinity. There is no set rule as to what will be considered a reasonable credit, but the question must be determined from all the circumstances in each particular case.

Section 180.—POWER OF ATTORNEY TO AGENT TO MAKE DEED.—The question as to what is necessary in a power of attorney for the sale of land, to authorize the agent to execute and deliver a deed to the purchaser, must

be determined in each case upon its own peculiar circumstances. As between the parties to the transaction, it is proper to consider their situation at the time of the execution of the power of attorney, and their intention is to be gathered from the words of the instrument, and all the circumstances under which it was written. A power of attorney for the sale of land is sufficient as between the parties to the transaction, whether properly acknowledged or recorded, or not, if it is otherwise valid.

Section 181.—RISK OF PURCHASER WHO TAKES LAWYER'S ADVICE AS TO TITLE.—A purchaser of land is not justified in refusing to accept a conveyance, and in demanding back a deposit paid by him on account of purchase-money, merely because of the opinion of his lawyer, though given in good faith, that the title is not safe, if the opinion is erroneous, and the record title is in fact perfect. The purchaser must take the risk of the soundness of the advice upon which he acts.

Section 182.—LIABILITY OF AUCTIONEER FOR DEPOSIT AT AUCTION SALE.—Although by the terms of an auction sale a deposit of a percentage of the cash payment with the auctioneer pending the examination of the title, which is warranted perfect, makes the auctioneer a stakeholder for the parties; yet when the title is shown to be perfect, the deposit then becomes, according to the terms of the sale, a portion of the cash payment, and the property of the owner of the land, less the charges and commissions of the auctioneer; and the auctioneer cannot thereafter return it to the purchaser except at his own risk.

Section 183.—AGENT'S KNOWLEDGE OF TITLE.—A real estate agent has nothing to do with the title or ownership of the property, and his knowledge as to the title, or the equitable estate of a third person therein, is of no consequence; and his right to the compensation contracted

for does not in any way depend on the validity or invalidity of the owner's title to the property.

Section 184.—INTEREST ALLOWED BY LAW ON AGENT'S COMMISSIONS.—A demand for broker's commissions, which is capable of being made certain by computation, draws interest from the time when it became due.

Civil Code, Section 3287.

Section 185.—HOW AUTHORITY OF AGENT CAN BE EXTENDED.—When the term of a real estate agent's employment is about to expire, the authority of the agent cannot be extended by a verbal agreement. The extension of the term of his employment, like the original agreement, must be in writing.

Section 186.—COSTS IN SUIT FOR COMMISSIONS.—Where a real estate agent sues in the Superior Court for commissions, he will have to pay the costs of the court —Clerk's fees, Sheriff's fees, Reporter's fees, jury fees—if the verdict in his favor be for less than \$300. In other words, the agent must secure a judgment for at least \$300, or he will not be entitled to costs. If the agent sues in the Justice Court, for less than \$300, the judgment in his favor will carry the costs.

Code of Civil Procedure, Section 1022.

Section 187.—COMMISSIONS OUT OF PURCHASE-MONEY.—Where the agreement between the owner and the agent is, that the agent is to receive his commissions "out of the purchase-money," or "out of the first money received" on the sale, the agent will not be entitled to any commissions at all, if the sale does not go through. Under such a contract, the sale must be completed, and the money paid by the vendee, before the agent is entitled to commissions.

Section 188.—SELLING LAND ON SHARES.—

Under an agreement between a land owner and a broker, whereby the latter is to sell the land for a share of the proceeds above the cost price and selling expenses after all the land is sold, the procuring of a purchaser for all the tract, who is accepted by the owner and with whom an executory contract is made, is a sufficient performance of the agreement to entitle the broker to his share of the profits.

Section 189.—PURCHASE BY AGENT FROM HIMSELF.—An agent or sub-agent employed to assist in the consummation of a sale of land is incapable of legally purchasing the property from himself without the knowledge of the principal, and such a purchase will always be set aside, at the option of the principal. The reason is, that the agent should not unite his personal and his representative characters in the same transaction; he cannot serve two masters; and the law will not permit him to be exposed to the temptation, or brought into a situation where his own personal interests conflict with the interests of his principal, and with the duties which he owes to his principal. The fiduciary relations between a principal and his agent preclude the latter from having any interest in the subject-matter of his agency adverse to that of his principal. In the employment of an agent the principal bargains for his disinterested skill and diligence, and whenever the interests of the agent become antagonistic to those of his employer he violates his obligation by continuing to act in his behalf without disclosing that fact. A broker, who is employed by the owner to sell his property, is, by the mere fact of accepting such employment, precluded from acquiring an interest in the property he is employed to sell. He cannot act as such agent in making a sale either to himself or where he is interested in the purchase, and he is equally precluded from having a personal interest in the result of the sale of which his principal is ignorant. Whenever he has an interest in making the sale which is antagonistic to that of his principal, he is unable to discharge his full duty to the latter, and by

continuing to act as his agent without disclosing to him the fact of such interest he commits a fraud upon him which will deprive him of all right to compensation for services. (Decided by the District Court of Appeals, in the case of Rauer's Law and Collection Co. vs. W. B. Bradbury, which decision is printed in Volume II of California Appellate Decisions, No. 86, page 377.)

Section 190.—PURCHASE BY AGENT FROM PRINCIPAL.—While an agent cannot purchase from himself, he may, where all the circumstances show fair dealing and good faith, purchase land from his principal, although it was placed in his hands to sell to others. There is no law against a purchase by an agent from his principal, where the facts are fully disclosed to the principal, and the agent acts in good faith, taking no advantage of his situation. The principal may, if he sees fit, deal with the agent as with any other person. The agent has the same right to deal directly with his principal as has a stranger. And when the agent deals with his principal at arm's length, and after a full disclosure of all that he knows with respect to the property, the sale will be as valid as though the purchase had been made by a stranger.

Section 191.—AGENT BUYING IN HIS OWN NAME.—When the agent is employed by his principal to buy real estate, and uses the principal's money in making a purchase of the land, but has the deed made in his own name, the law will not permit him to gain any advantage by the transaction. He will be held as a trustee for the principal, and will be compelled to convey the land to the principal.

Section 192.—WHEN AUTHORITY OF AGENT REVOCABLE.—Where a real estate agent has authority to sell land, if no time is stated within which the sale can be made, the authority is revocable at the will of the owner, at any time before it has been exercised.

Section 192a.—WHEN OPTION CAN BE REVOKED.—Where an option to sell real estate is without consideration, the owner can revoke the option before the expiration of the time given, if no acceptance has been communicated to him. If a consideration has been paid for the option, the owner cannot revoke it until the time expires. (Decided by the California Court of Appeals, in the case of *Canty vs. Brown*, which decision is printed in Volume IX of California Appellate Decisions, page 475.)

Section 193.—WHICH ONE OF TWO BROKERS IS ENTITLED TO COMMISSIONS.—When two brokers have been employed by an owner, and one of them in fact names the property to the purchaser, and the purchaser negotiates solely with him and at his instance with the owner, the other broker is not entitled to commissions, notwithstanding he casually learns that such purchaser is considering the expediency of making the purchase, and therefore calls upon him and urges the purchase, and reports his name to the owner. Only the broker whose efforts were the procuring cause of the sale is entitled to the commissions from the principal.

Section 194.—AUTHORITY OF AGENT MAKING LEASE FOR TERM LONGER THAN ONE YEAR.—Where a real estate agent is authorized to lease land of his principal, he cannot make a lease for a term longer than one year, unless his authority to make the lease is in writing. The authority of an agent to make a lease for a period in excess of one year must be in writing, and cannot be conferred by oral contract. A lease by an agent exceeding the term of one year cannot operate as a valid lease for one year, the agent's authority not being in writing. Where the owner of land, without knowledge of a lease made by an agent without authority, has rented the land to another, no power remains in him to ratify the previous unauthorized act of his agent.

Civil Code, Section 1624.

Section 195.—DEATH OF PRINCIPAL REVOKES AUTHORITY OF AGENT.

—The death of the principal revokes the authority of the agent, except where the agent's authority is coupled with an interest in the land. In order that the agent's authority shall survive the death of his principal, it is necessary that such an interest or estate shall have passed to the agent as will entitle him to execute the authority to sell in his own name. Sometimes, the agent will hold a power of attorney, from which it can be seen that he has an interest in the land, and that it was the intention of his principal that the power should be irrevocable by death. But, whatever form the agent's written authority may be in, his right to commissions, or the principal's promise to pay commissions on the sale, will not of themselves be sufficient to create an agency which will survive the principal's death. The agent must have acquired by his power from the principal an interest in the land itself. What constitutes an interest in the land, sufficient for keeping alive an agent's authority after the principal's death, depends very much upon the circumstances of each particular case—so much so that illustrations of the rule here would not be of value.

Section 195a.—COMMISSIONS ON SALES OF REAL PROPERTY UNDER ORDER OF COURT.

—In the settlement of an estate, in any order of sale of real estate, or subsequent to making any such order, the court may authorize any executor or administrator to enter into a contract with any bona fide real estate agent to secure a purchaser, providing for the payment by the estate to said agent of a commission, the amount of which shall be specified, payable out of the proceeds of any such sale. If a sale to a purchaser obtained by such agent is returned to the court for confirmation and said sale be confirmed to such purchaser, such contract will be binding and valid as against the estate.

By the execution of any such a contract no personal liability will attach to the executor or administrator, and no liability of any kind will be incurred by the estate unless an actual sale is made and confirmed by the court.

Act of the Legislature, approved March 10, 1909.

Section 195b.—PERSONAL PROPERTY BROKERS.

—A personal property broker may charge, receive, and collect, for money loaned or advanced on personal property, secured by chattel mortgage, bill of sale, or other contract, or secured by an assignment or power of attorney respecting wages, salary, earnings or income, the sum of two per cent per month, and no more.

Act of the Legislature, approved April 16, 1909.

No further or other charges, either for recording, insuring or examining the security or property, or for the drawing, executing or filing of papers, or for any services or upon any pretext whatsoever beyond the aforesaid charge for interest or discount shall be asked, charged, or in any way received, where the same would thereby make a greater charge for the money or thing advanced than the aforesaid rate of two per centum per month, and where made, all such charges shall be considered and be of the same effect as so much added interest; provided, however, that with the consent of the borrower he may be required to pay the fees or charges actually expended where the same are made necessary by law to give full legal effect to any instrument given hereunder.

No contract of any kind or nature made by any personal property broker which comes within the scope of business as set forth herein, or which in any way involves any security given to secure the performance of such contract, shall be valid or of any force, virtue or effect, either at law or in equity, if there is therein or thereon directly or indirectly charged, accepted or contracted to be received or paid, either

in money, goods, discount, or thing in action, or in any other way, a greater benefit, rate of discount, or interest than the rate of two per centum per month; and if a greater benefit, rate of discount or interest than two per centum per month is directly or indirectly advanced or paid upon any such contract as is in this section designated, the excess above the said rate of two per centum per month so advanced or paid may be demanded and recovered by the person or his legal representatives or assigns who advanced or paid the same from the person or corporation either to whom or for whose use or benefit such payment or advance or any part thereof was made.

The failure of any person or corporation, or any employee, employees, agent, agents, representative or representatives making, renewing or extending a loan or advance properly falling within the scope of business as set forth herein, to comply with any part of the provisions hereof, shall be guilty of a misdemeanor, and for the first offense punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding \$500, or by both, and for each subsequent offense by a fine of not less than \$50 or more than \$500, or by imprisonment in the county jail of not less than ten days and not to exceed six months, or by both such fine or imprisonment.

Penal Code, Section 19.

Act of the Legislature, approved April 21, 1911.

Fire Insurance.

Section 196.—CONTRACT BETWEEN THE PARTIES.—Insurance against loss by fire constitutes one of the common and important contracts in the business of every community. In California the fire insurance business is carried on by corporations, nearly all having ample capital, and fully able to meet such losses as they are required to pay. Yet so many and so varied are the policies issued, and the circumstances and causes of fires and losses, and the claims and adjustments of claims after fires have occurred,

that it is not a matter for wonder that conflicts are continually arising between the insurer and the insured, over the terms and conditions of the contract and the rights and obligations of the parties. The Legislature has attempted in our statute law to fix the mutual obligations and liabilities of the parties to the contract of fire insurance, and the Supreme Court of California has in many decisions stated definite rules of construction which must be applied to the policies issued by insurance companies. The contract of insurance is generally defined by the statute of California as being a contract whereby one undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event. Insurance against fire is a contract whereby the insurer becomes bound, for a definite premium or consideration, to indemnify the insured against loss or damage to the property named in the policy. The policy, and the conditions contained in it, fix the relations between the parties to the contract, and furnish the measure of their respective rights and liabilities.

Civil Code, Section 2527.

Section 197.—DESIGNATION OF PARTIES.—The party who issues the policy of fire insurance is called the insurer, and the party who is indemnified is called the insured.

Civil Code, Section 2538.

Section 198.—INSURABLE INTEREST.—Every interest in property, or relating to it, or liability in respect to it, of such a nature that a contemplated peril might directly injure the insured, is an insurable interest, in the law of California. The contract of insurance, being one of indemnity, the insured must have such an interest in the property as that its destruction will result in pecuniary loss to him. But it is not necessary he shall have a title, provided his interest, whatever it may be, is such that it would be impaired or injured by the destruction of the

property. Nor is it necessary that the interest of the insured be personal; for if he has an interest in the property as trustee, agent, mortgagee, commission merchant, common carrier, warehouseman, administrator, pledgee, lessor or lessee, consignee, or judgment creditor, the courts have held that this is an insurable interest. And it has been held that even one who has no title, legal or equitable, in the property, and no present possession or right of possession, has an insurable interest if he will derive benefit from the continued existence of the property, or will suffer loss by its destruction.

Civil Code, Section 2546.

Section 199.—MEASURE OF INTEREST IN PROPERTY.—The measure of an insurable interest in property is the extent to which the insured might be damaged by loss of or injury to the property. Therefore, under the provisions of our law, if the owner of a building insures it for more than it is worth, he will not be entitled to the full amount, merely because the company has issued a policy and accepted a premium on a fictitious value; but the amount the insurer will be liable to pay, in all cases, will be the amount, to the extent of the policy, necessary to reimburse the insured for the pecuniary loss he has sustained, unless the insurer has agreed in the policy that in case of loss the property shall be valued at a given sum. Where the interest of the insured is less than a whole ownership, as where he has an interest only as mortgagee, his insurable interest in the property is measured by the amount of the debt, and no more; and in fact, the insured can never be entitled to recover more than his actual loss.

Civil Code, Section 2550.

Section 200.—WHEN INSURABLE INTEREST MUST EXIST.—The law of California provides, that the interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist between those two dates. The meaning of this is, that where the policy

does not prohibit it, the insured may dispose of his interest in the insured property, after the policy has been issued, and if, before the term of the policy ends, he becomes again the owner of his interest in the property, and owns it at the time of the loss, he may recover on the policy. The interest of the party in the insurance is simply suspended, when he has disposed of the property without changing the policy to another, until the interest in the property and the interest in the insurance are again vested in himself. A change in interest in a thing insured, after the loss, does not affect the right of the insured to collect the insurance. Where a person holds a policy which includes several articles separately insured, and transfers some of the articles only, his insurance upon the articles not transferred is still good. A policy is not rendered invalid by the death of the insured; for his administrator will hold the policy for the benefit of those who succeed to his estate. The transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

Civil Code, Sections 2552, 2553, 2554, 2555, 2556, 2557.

Section 201.—INSURANCE WITHOUT INTEREST ILLEGAL.—The sole object of insurance is the indemnity of the insured, and if he has no insurable interest when the policy takes effect, the policy is void; and if he has no insurable interest when the loss occurs, he cannot collect the insurance.

Civil Code, Section 2551.

Section 202.—WAGER POLICIES VOID.—Every policy executed by way of gaming or wagering is void.

Civil Code, Section 2558.

Section 203.—DUTY OF PARTIES IN MAKING THE CONTRACT.—Each party to a contract of fire insurance, if they expect the policy to be free from attack, must deal fairly with one another, and must not be guilty of misrepresentation or concealment of material facts, upon entering into the contract. Insurance companies act usually, if not always, by agents sent out to solicit insurance, or by local agents residing in the locality where the property to be insured is situated. The company is bound by all the acts of such agents done within the scope of their authority. The insured may act for himself, or through a broker or other agent. But however the parties come together, the law requires the utmost good faith on the part of both. The law of California, recognizing this principle, provides that each party to a contract of insurance must communicate to the other in good faith all facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining; therefore, it is the duty of the company's agent to disclose fully to the insured all the conditions and requirements of the policy which his company proposes to issue, and it is the duty of the insured to communicate to the agent all facts within his knowledge respecting the situation or condition of the property; but neither party to a contract of insurance is bound to volunteer information of matters which the other knows, or which in the exercise of ordinary care the other ought to know, where there is no reason to suppose him ignorant of them; and neither party is bound to give information to the other of facts of which the other waives communication; and neither party is bound to give the other information of matters open to the inspection equally of both; except, that either party must answer the inquiries of the other, as to any fact affecting the insurance, though it would not have been necessary to say anything about it if no inquiry had been made. Where inquiries are made by either party of the other, he is bound to answer truthfully and in good faith. Both parties will be responsible for any false representations made during the negotiations, and for any false

representation on a material matter the policy will be rescinded. The law deems a representation false when the facts fail to correspond with its assertions or stipulations.

Civil Code, Sections 2563, 2564, 2566, 2579.

Section 204.—THE POLICY OF INSURANCE.—The written instrument in which a contract of insurance is set forth is called the policy of insurance. The policy is required by the law of California to specify, the parties between whom the contract is made, the rate of premium, the property insured, the interest of the insured in the property, if he is not the absolute owner, the risks insured against, and the period during which the insurance is to continue. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy. To render an insurance effected by one partner or part owner applicable to the interest of his copartners or of other part owners, it is necessary that the terms of the policy should be made to apply to the joint or common interest. When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him. A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

Civil Code, Sections 2587, 2589, 2590, 2591, 2592, 2593.

Section 205.—OPEN AND VALUED POLICIES.—A policy is either open or valued. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss. A valued policy

is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Civil Code, Sections 2594, 2595, 2596.

Section 206.—RUNNING POLICY.—A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements. The general rule is that the property insured must be specified in the policy. But open and running policies are an exception to this rule. They were brought into use to enable merchants to insure their goods shipped at distant ports, when it is impossible for them to know the precise quantity or character of the goods, or the particular vessel in which they are shipped, and thus unable to describe accurately or particularly the subject of insurance. These policies generally, if not universally, require that the risk shall be declared or reported to the company as soon as known to the assured.

Civil Code, Section 2597.

Section 207.—ACKNOWLEDGMENT IN POLICY OF RECEIPT OF PREMIUM.—An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

Civil Code, Section 2598.

Section 208.—AGREEMENT NOT TO TRANSFER.—An agreement, made before a loss, not to transfer the claim of a person, insured against by the insurer, after the loss has happened, is void.

Civil Code, Section 2599.

Section 209.—CERTAIN WARRANTIES.—A warranty is either expressed in the policy, or implied from circumstances. A statement in a policy, of a matter relating to

the person or thing insured, or to the risk, as a fact, is an express warranty of the fact. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place; as that a watchman will be kept on the premises, or that a supply of water will be kept on the building ready for use.

Civil Code, Sections 2607, 2608.

Section 210.—WHAT ACTS AVOID POLICY.—The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind. A policy may declare that a violation of special provisions shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

Civil Code, Sections 2610, 2611.

Section 211.—EXONERATION OF INSURER.—An insurer is not liable for a loss caused by the wilful act of the insured; but the insurer is not exonerated by the mere negligence of the insured, or of his agents, or others.

Civil Code, Section 2629.

Section 211a.—PROXIMATE AND REMOTE CAUSE OF LOSS.—A new law was passed by the Legislature of 1907, which was intended to have some bearing upon suits for losses in the San Francisco fire. The language of the law is not clear, and it would probably be difficult for the legislator who prepared it to tell just what it was intended to mean. Such as it is, however, it is quoted below:—

“In an action to recover upon a contract of insurance wherein the defendant claims exemption from liability upon the ground that, although the proximate cause of the loss was a peril insured against, the loss was remotely caused by or would not have occurred but for a peril excepted in the contract of insurance, the defendant shall in his answer set forth and specify the peril which was the proximate

cause of the loss, in what manner the peril excepted contributed to the loss or itself caused the peril insured against, and if he claim that the peril excepted caused the peril insured against, he shall in his answer set forth and specify upon what premises or at what place the peril excepted caused the peril insured against.

"This act shall apply to all pleadings filed after the passage of this act, as well as actions then pending as in those thereafter begun." (In effect March 21, 1907.)

Section 212.—NOTICE OF LOSS.—In case of loss by fire, the insured must give notice to the company of the loss, without unnecessary delay. If the policy fix the time within which notice of loss must be given to the company, the insured must give notice within that time; if the policy does not fix the time, the insured must give notice of the loss within a reasonable time. The notice may be given to an agent of the company, or it may be sent to the office of the company, and it may be sent by the most available means, by mail, or in person. If the policy provides that the notice must be in writing, it must be so given, but verbal notice will be sufficient without such provision.

Civil Code, Section 2633.

Section 213.—PRELIMINARY PROOFS OF LOSS.—When preliminary proofs of loss are required by a policy, the insured is not bound to give such proofs as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. All defects in a notice of loss, or in preliminary proof of loss, which the insured might remedy, and which the insurer omits to specify to him without unnecessary delay as grounds of objection, are waived. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by an act of the insurer, or if he omits to make objection promptly and specifically upon that ground. If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a Justice of the Peace, or other person,

it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just ground of disbelief in the facts necessary to be certified to.

Civil Code, Sections 2634, 2635, 2636, 2637.

Section 214.—DOUBLE INSURANCE.—A double insurance exists where the same interest in property is insured by several insurers separately. In cases of double insurance, the several companies must contribute ratably toward the loss, without regard to the dates of the several policies.

Civil Code, Section 2642.

Section 215.—ALTERATION INCREASING RISK.—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Civil Code, Section 2753.

Section 216.—ALTERATION WHICH DOES NOT INCREASE RISK.—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Civil Code, Section 2754.

Section 217.—VERBAL CONTRACT TO ISSUE POLICY.—A verbal contract to issue a policy, made by the owner of the property and the agent of the company, is a valid agreement. Therefore, if the owner of a building applies to an agent, or if the agent solicits the insurance, and a verbal agreement is made for a consideration that a policy will be issued for a certain amount covering the property, and the company then refuses to issue the policy, it will be liable for the loss, whether the policy is issued or not.

If a fire occurs and destroys the property, the owner can sue the company for damages, for its failure to issue the policy, and recover his loss on the property, not exceeding the amount of insurance verbally agreed upon.

Section 218.—CERTIFICATE OF NOTARY.—Under a provision of a fire insurance policy requiring that in case of loss by fire the assured must obtain the certificate of the Notary nearest the insured building, not concerned in the loss as a creditor or otherwise, nor related to the assured, as to the justice of the claim, where it appears that the nearest Notary refused to act, on the ground that he was employed by the insurance company in ascertaining the facts and taking affidavits concerning the fire, the assured is relieved of the necessity of obtaining his certificate, and need not inform the company of the reason for obtaining the certificate of another Notary. (Decided by the Supreme Court in case of *Noone vs. Transatlantic Fire Insurance Co.*, which decision is printed in Volume 88 of the California Reports, page 152.)

Section 219.—FALSITY OF MATERIAL REPRESENTATIONS BY INSURED.—One who makes an application for fire insurance must not make false representations, as to any material fact upon which the insurance depends, for if he does the company may cancel the policy. This the company may do by making a tender of the premium back to the insured, and notifying him that the policy is canceled on account of the false representation. And if the company, where a false representation has been really made, tenders the premium back and gives the insured notice of the cancellation of the policy, before the commencement of a suit on the policy, this will operate as a rescission of the policy and will defeat the suit. As an illustration, it may be cited, that a condition in a policy of insurance upon a mill, that during such time as the mill is idle a watchman shall be employed by the insured "to be in and about the

premises day and night," is broken if during the time the mill is idle but one watchman is employed, who was not instructed to watch the mill at night, and who slept every night in a building three or four hundred feet from the mill. A man employed to watch in the daytime, and who is permitted to sleep at night, is not a watchman at night. And to entitle the insured to recover upon such a policy it must be shown that he has in good faith employed a watchman to perform the duties required by the terms of the policy. (Decided by the Supreme Court in the case of Rankin vs. Amazon Insurance Co., which decision is printed in Volume 89 of the California Reports, page 203.)

Section 220.—STATEMENTS AS TO VALUATIONS.—A provision in the policy that the application shall be considered a warranty, and if the property is overvalued in it, the policy shall be void, applies only where the statements as to value are intentionally false.

If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense it would be to the insured, at the time of the commencement of the fire, to replace the thing lost or injured in the condition in which it was at the time of the injury.

Act of the Legislature, approved April 15, 1909.

Section 221.—RIGHTS OF MORTGAGEE—EFFECT OF SALE UNDER FORECLOSURE.—A mortgagee of insured property, to whom the loss is made payable, is entitled to recover the loss to the full extent of the mortgage debt, although the fire occurs after a foreclosure sale and purchase by the mortgagee, but before the time for redemption has expired and before the execution of a sheriff's deed to the mortgagee. (Decided by the Supreme Court in the case of National Bank vs. Union Insurance Co., which decision is reported in Volume 88 of the California Reports, page 497.)

Section 222.—INSURANCE BY COMMISSION MERCHANT—INCORRECT STATEMENT AS TO OWNERSHIP.—The Springfield Fire and Marine Insurance Co. insured against loss by fire a stock of goods, the property of a corporation in which F. H. McCormick and F. N. Delanoy were stockholders; McCormick and Delanoy held the goods as security for advances made to the corporation, but in the application for the insurance they described the property as their own. The policy referred to the application, and made it a part of the policy, and provided that if the insured were not the sole, absolute, and unconditional owners of the property, and if their interest was not truly stated in the policy, then the policy should be void. McCormick and Delanoy sued the company for the insurance, but the Supreme Court decided that the policy was invalid, because the ownership was not truly stated in the application. (Decided by the Supreme Court in the case of McCormick vs. The Springfield Fire and Marine Insurance Co., which decision is printed in Volume 66 of the California Reports, page 361.)

Section 223.—RIGHT OF ARBITRATION.—When a policy of fire insurance provides for arbitration upon the written request of either party, in case of difference touching any loss or damage after the proof, the arbitration is not a condition precedent to the right of action, unless demanded after proof of loss; and if no demand for arbitration is made within a reasonable time, or until after a right of action has become complete by the lapse of sixty days from the proofs of loss, the right to demand arbitration is waived. No right of arbitration exists under a fire insurance policy when the stipulation for arbitration does not definitely fix the number of arbitrators nor provide a mode of selection. (Decided by the Supreme Court in the case of Case vs. Manufacturers' Insurance Co., which decision is printed in Volume 82 of the California Reports, page 263.)

Section 224.—WAIVER OF PROOF OF LOSS BY ARBITRATION.—A provision in a policy of fire insurance, requiring the assured in case of loss to forthwith give notice thereof to the insurer, and produce a certificate of preliminary proof from a notary or magistrate, is waived, if the insurer, after learning of the loss, makes no objections to the absence of the notice and preliminary proof, but joins in proceedings for determining the loss by arbitration, which proceedings are required by the policy to be taken after proof of the loss has been received in due form. In such a case, the company cannot deny the authority of its agents to waive the provision of the policy as to notice and preliminary proof, when it adopts their acts in that regard, and relies on the award as a defense to an action to recover for the loss. (Decided by the Supreme Court in the case of *Carroll vs. Girard Fire Insurance Co.*, which decision is printed in Volume 72 of the California Reports, page 297.)

Section 225.—WAIVER OF CONDITION AS TO PREPAYMENT OF PREMIUM.—An express provision in a policy of insurance that the company shall not be liable on the policy until the premium is actually paid is waived by the unconditional delivery of the policy to the assured, as a completed and executed contract, under an agreement that a credit shall be given for the premium, and the company is liable for a loss which may occur during the period of credit. If an insurance policy contains a formal receipt of premium, its unconditional delivery is conclusive evidence of payment, so far as to estop the company issuing it from denying the validity of the policy, notwithstanding a declaration in the policy that it shall not be binding until the premium is actually paid. (Decided by the Supreme Court in the case of *Farnum vs. Phoenix Insurance Co.*, which decision is printed in Volume 83 of the California Reports, page 246.)

Section 226.—REMEDY FOR UNAUTHORIZED TERM OF CREDIT.—The giving of any credit by authority of the insurance company being a waiver of actual payment as a condition precedent to liability, the only remedy for an unauthorized term of credit is for the company to personally notify the assured, who is obliged to pay the premium, that he must pay at the end of the authorized term of credit, or that the policy will be canceled for non-payment of premium. If the notice is sent by mail, and is not received, the cancellation for non-payment of premium is ineffective.

Section 227.—INSURANCE OF UNOCCUPIED BUILDING.—Insurance companies may by their acts and conduct be estopped from availing themselves of a defense which they might otherwise interpose to an action upon their policies, or may waive their right to avail themselves of such defense. If a building is insured against loss by fire under a policy containing a proviso that it shall be or become void in case the building is or shall become vacant or unoccupied, when it was well known to the company's agents at the date of the policy and subsequently that it was and remained unoccupied, the company will be presumed to have waived the clause as to occupancy. (Decided by the Supreme Court in the case of *West Coast Lumber Co. vs. State Investment and Insurance Co.*, which decision is printed in Volume 98 of the *California Reports*, page 502.)

Section 228.—LIABILITY OF INSURANCE COMPANY FOR FIRES CAUSED BY EARTHQUAKES.—The property of the insured was consumed in a general conflagration in San Francisco which had its origin in the earthquake of 1906. The fire was started at several points in the city and spread to the insured property. The policy provided that the company should not be liable for loss caused directly or indirectly by invasion, or for loss or damage occasioned by or through any earthquakes. In *Williamsburgh City Fire Ins. Co. v. Willard*, Volume 164, *Federal Reporter*,

page 404, it was decided by the Circuit Court of Appeals that although the words "directly or indirectly" applied to invasions, they could not be made to embrace earthquakes; "occasioned" was equivalent to "caused"; and a loss indirectly caused by the progress of a fire from a distance, originally started by an earthquake, is a loss which the insurance company must pay. The Supreme Court of the United States affirmed the decision of the Circuit Court of Appeals.

Section 229.—CONDITION AS TO CHANGE OCCURRING IN BUILDING.—If a policy of insurance against fire contains a clause, that if the building shall fall except by fire, the insurance shall immediately cease, and the walls of the building are of brick, and a portion falls, leaving more than three-fourths standing, the building is not a fallen building within the condition of the policy, and if destroyed by fire in that condition the insurance company is liable for the loss. A clause in an insurance policy that it shall be void if any change occurs in the building by which the risk is increased without the consent of the company, has reference only to a change produced by the act of the insured. It does not mean a change occasioned by accident, or by any cause over which the insured had no control. (Decided by the Supreme Court in the case of *Breuner vs. Liverpool and London and Globe Insurance Co.*, which decision is printed in Volume 51 of the California Reports, page 101.)

Section 230.—RULES FOR INTERPRETING CONTRACT OF INSURANCE.—A contract of insurance must be interpreted by the same rules as apply to any other contract. It must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as that intention can be ascertained. If the contract for insurance is in writing, as where an application has been signed and a policy issued, the intention of the parties is to be ascertained from the application and the

policy alone, if possible. The whole contract is to be taken together. When it is partly written and partly printed, the written parts control the printed parts, and, if there is any conflict between the two, the printed part must be disregarded. The contract may be explained by reference to the circumstances under which it was made, and in cases of uncertainty it is to be interpreted most strongly against the party who caused the uncertainty to exist. Where the policy provides for the forfeiture of the contract, upon failure to perform conditions named, the policy is to be interpreted most strongly in favor of the insured. The law does not favor forfeitures, and the insurance company must make out a very strong case showing that a condition has not been complied with, before a court will declare the policy forfeited. The suit of *Yoch vs. Home Mutual Insurance Company*, decided by our Supreme Court in 1896, illustrates the rules which are to be applied to the interpretation of contracts of insurance, where the effort is to ascertain the intention of the parties at the time of contracting. The policy contained a printed condition that, unless otherwise provided by agreement indorsed thereon, it should be void if (any usage of trade to the contrary) gasoline was kept on the premises. Testimony was given at the trial of the case tending to show that gasoline is one of the articles of merchandise usually kept in country stores, but that it is customary to keep it in a room or building by itself. It was also shown that, during the month prior to the fire, the insured would, in the daytime, bring small quantities of gasoline—one or two cans—from a building on another lot, which was used for storing it, into a room within the insured building and adjacent to the store, for the purpose of selling it at retail to her customers. The Supreme Court decided the case against the insurance company, and said: "It must be held that it was the intention of the defendant to insure gasoline, if it was an article usually kept in the country stores, and that, if such was its intention, it was no violation of the policy for the insured to keep gasoline upon the premises as a part of the stock of merchandise. When the defendant agreed to insure a stock of merchandise

'such as is usually kept in country stores,' it must be presumed to have known the character of the merchandise which is usually kept in country stores, and that gasoline is one of these articles, and, consequently, that the policy covered all such merchandise. When it was shown that gasoline is one of the articles which is usually kept in country stores, the court correctly held that it was a part of the subject of the insurance, and that the insured did not violate the policy by keeping it in stock. The defendant, when it issued the policy in question, knew the character of country stores, and that Mrs. Brooks kept for the purpose of retailing to her customers all of the articles kept by her, and that the gasoline which she kept was to be disposed of by retail in the same way as the other portion of her stock. To give to the policy the construction now claimed by the defendant would be to hold that, although it agreed with her to insure all the stock she usually kept in her store, yet, if she continued to keep that stock, she forfeited all rights under the policy. The clause in the policy above quoted, and which is relied on by the appellant, cannot be construed as having this effect. The qualification therein which excepts the policy from becoming void, viz., 'unless otherwise provided by agreement indorsed thereon,' is found in the policy itself. The subject-matter of the risk—the stock of merchandise 'such as is usually kept in country stores'—was written in the policy by the insurer; and, as the defendant must be deemed to have intended thereby to insure all such articles as are usually kept in a country store, it must be held that this was an 'agreement indorsed' upon the policy, which removed the exemption from liability that would otherwise have existed. If there be any repugnance between the written phrase, 'such as is usually kept in country stores,' and the printed clause, 'any usage or custom of trade or manufacture to the contrary notwithstanding,' the former controls the latter, as being the more deliberate expression of the contracting parties." (Decided by the Supreme Court in the case of *Yoch vs. Home Mutual Insurance Co.*, which decision is printed in Volume 107 of the California Reports, page 327.)

Section 231.—TIME WHEN POLICY TAKES EFFECT.—The general rule is that a policy, if delivered, takes effect from its date, unless it be otherwise stated in the policy, or unless there is evidence of a contrary intent. If the premium be paid, and the policy be not delivered till afterward, the policy yet takes effect as of its date, even though a loss intervenes. The circumstances and the intent of the parties are to control. Where the exact time of the commencement and termination of the risk are specified in the policy, or, if no policy has been written, in the contract, such specification governs in all cases; where no time has been expressly indicated, the circumstances of the case will be considered for the purpose of determining it; if there are no circumstances indicating the intention of the parties, and no time is specified in the contract, the risk will be deemed to have commenced at the date of the contract. In the case last mentioned, if, before the contract of insurance is made, the property has ceased to exist, although unknown to the parties, the risk never attaches.

Section 232.—CONTRACT OF REINSURANCE—EFFECT OF PRIOR LOSS.—Where an insurance company, which has insured the property of a lumber company against loss by fire, contracts for reinsurance by way of partial indemnity with another insurance company, in the absence of any circumstances indicating the mutual intention of the parties to give to the contract of reinsurance a retrospective effect, the company agreeing to insure is not liable if the property insured had been destroyed by fire prior to the agreement, though at the time of the application and agreement neither of the insurance companies knew of the prior destruction of the property. (Decided by the Supreme Court in the case of Union Insurance Company vs. American Fire Insurance Company, which decision is printed in Volume 107 of the California Reports, page 327.)

Section 233.—WARRANTIES.—Warranties, in insurance, are distinguished into two kinds: Affirmative, or those

which allege the existence at the time of the insurance of a particular fact, and avoid the contract if the allegation be untrue; and promissory, or those which require that something shall be done or omitted after the insurance takes effect and during its continuance, the doing or omission of which will avoid the contract. An express warranty is a stipulation inserted in writing on the face of the policy, on the literal truth or fulfilment of which the validity of the entire contract depends. By a warranty the insured stipulates for the absolute truth of the statement made, and the strict compliance with some promised line of conduct, upon penalty of forfeiture for non-compliance with the warranty. A warranty must be strictly complied with. Whether the fact stated or the act stipulated for be material to the risk or not is of no consequence, the contract being that the matter is as represented, or shall be as promised; and unless it prove so, whether from fraud, mistake, negligence, or other cause, not proceeding from the insurance company, and not caused by the intervention of the law or act of God, the insured can have no claim. One of the very objects of the warranty is to preclude all controversy about whether the statement was material or not. The only question in such cases is, Has the warranty been kept? If the warranty be a statement of facts, it must be literally true; if a stipulation that a certain act shall or shall not be done, it must be literally performed. Illustrating the law, it may be said, that if a house be insured against fire, and the language of the policy is, "Warranted, during the policy, to be covered with thatch," the insurance company will be discharged from liability if during the insurance the house should be covered with wood or metal, although the risk is diminished; for a warranty excludes all argument in regard to its reasonableness, or the probable intent of the parties. Parties may contract as they please. When a warranty is adopted by them in their contract, the courts will not inquire as to its wisdom or folly, but must exact its observance as agreed to. The Supreme Court of California construed a "watchman clause" in a policy issued by the Scottish Union and National Insurance Co., which

read: "Warranted by the insured that during such times as the within buildings or works are idle or not in operation, whether closed for repairs or during the absence of workmen, or otherwise (except as otherwise herein stated), one or more watchmen shall be on duty constantly, day and night, in and immediately about said buildings or works, or this policy shall be null and void." The insurance was on a sawmill, which was destroyed by fire. The watchman of the insured worked about the mill during the day, and slept at night in a house about 350 yards distant, and visited the buildings several times during the night. The Supreme Court held that this was not a sufficient compliance with the warranty in the policy that a watchman should be kept on duty "constantly day and night in and immediately about" the insured buildings. There was also a controversy in the case as to whether the mill was "shut down," within the meaning of the warranty in the policy, and the Supreme Court held that a sawmill which had stopped running for the winter is shut down, within the meaning of such term in a policy, though men are employed about the premises shipping lumber, and though the machinery has not been dismantled and put in shape for the winter. (Decided by the Supreme Court of California in the case of McKenzie vs. Scottish Union and National Insurance Co., which decision is printed in Volume 112 of the California Reports, page 548.)

Section 234.—PROVISION AS TO BRINGING SUIT.—The policies of very many insurance companies have provisions similar to the following: "No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity until after a full compliance by the insured with all the requirements of this policy, nor unless commenced within twelve months next after the fire." And, also, that "proof of loss shall be made to the company within sixty days after the fire." Where a policy contains these provisions, a suit on a policy cannot be maintained if the proofs of loss were made after sixty days, and there is no evidence of a waiver by the company of the condition.

Section 235.—PROOFS OF LOSS TO REINSURING COMPANY.—Where the risks of a fire insurance company are reinsured in another company, under a contract whereby the latter assumes the management and control of the business of the original insurer, and agrees to make adjustment and prompt payment of its losses, proofs of loss under a policy issued by the original insurer may be made to the reinsuring company. (Decided by the Supreme Court of California in the case of *Whitney vs. American Insurance Co.*, which decision is printed in Volume 128 of the California Reports, page 121.)

Section 236.—LIABILITY OF HEIR FOR PREMIUM.—A policy procured by an heir, "on the estate" of deceased, protects the interest of the heir in the property, though the administrator of the estate repudiates the contract and has nothing in fact to do with it. Having procured the policy, the heir is liable for the premiums, and will be compelled to pay them, no matter what action the administrator may take with regard to them. (Decided by the Supreme Court of California in the case of *Phoenix Insurance Co., vs. Hancock*, which decision is printed in Volume 123 of the California Reports, page 222.)

Section 237.—INSURANCE ON HARVESTER WHILE IN USE.—A policy of insurance on a harvester "while in use" does not cover a loss occurring while it is stored in a shed, and is not being actually used for harvesting purposes. (Decided by the Supreme Court of California in the case of *Slinkard vs. Manchester Fire Assurance Co.*, which decision is printed in Volume 122 of the California Reports, page 595.)

Section 238.—LIABILITY OF COMPANY ON POLICY WRITTEN BUT NOT DELIVERED UNTIL AFTER FIRE.—A liability may attach to an insurance company, when the policy has been written but not delivered until after the fire. If the policy is the memorial

of a contract, which in its essentials has been agreed upon verbally before the fire, and which the parties intended should take effect according to its terms, the fact that the policy was not delivered to the insured until after the fire will make no difference in the company's liability; and if the terms of the contract to insure, as verbally entered into, and afterwards embraced in the undelivered policy, are clearly shown, the company would be liable without any delivery of the policy at all. If, however, there has not been any verbal agreement, before the fire, that the company should insure the building and issue its policy accordingly, then delivery of the policy after the building has been destroyed, to the knowledge of the parties, will not give to the policy a binding effect. It is therefore in all such cases a very important question, whether the insurance company considered or admitted at any time that the contract was complete, and the risk had attached; and in this connection, the courts will always consider as strong evidence in favor of the insured the declarations and admissions of the agents of the insurance company, while engaged in the transaction with the insured, and up to the time the policy is delivered. Such statements and admissions of the agents, to bind the company, must be made at the very time of the negotiations and transactions for the insurance, and while acting in the business with the insured. (Decided by the Supreme Court of California in the case of Crawford vs. Transatlantic Fire Insurance Co., which decision is printed in Volume 25 of the California Reports, page 609.)

Section 238a.—STANDARD FORM OF FIRE INSURANCE POLICY.—The Legislature of 1909 passed a law adopting a standard form of fire insurance policy for the State of California. The following form was adopted, for use by all insurance companies after August 1st, 1909:

CALIFORNIA STANDARD FORM FIRE INSURANCE
POLICY.

No..... Amount, \$.
Rate.....

No other insurance permitted
except by agreement endorsed hereon and added hereto.

(Here insert name of company, and place of its main office in California, and name of state or country under which incorporated or organized.)

IN CONSIDERATION of the stipulations herein named and of.....dollars premium does insure..... for the term of.....from the.....day of..... 191., at noon, to the.....day of.....191., at noon, against all loss or damage by fire, except as hereinafter provided.

To an amount not exceeding.....dollars to the following described property while located and contained as described herein, and not elsewhere, to wit:

The company will not be liable beyond the actual cash value of the interest of the insured in the property at the time of loss or damage nor exceeding what it would then cost the insured to repair or replace the same with material of like kind and quality; said cash value to be estimated without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating repair or construction of buildings, and without compensation for loss resulting from interruption of business or manufacture.

This policy is made and accepted subject to the foregoing stipulations and conditions and those hereinafter stated, which are hereby specially referred to, and made part of this policy, together with such other provisions, agreements, or conditions as may be endorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except by writing endorsed hereon or added hereto, and no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy shall not be valid until countersigned by the duly authorized agent of the company, at.....

In Witness Whereof, this company has executed and attested these presents (here insert name of company).

By.....

Countersigned at.....this.....day of.....191..
.....Agent.

Stipulations and Conditions Specially Referred to.

Property Not Covered. (a) This company shall not be liable for loss to accounts, bills, currency, evidences of debt or ownership or other documents, money, notes or securities, nor, (b) unless liability is specifically assumed hereon, for loss to bullion, casts, curiosities, drawing, dies, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, business or store or office furniture or fixtures, sculptures, frescoes, decorations, or property held on storage or for repair.

Hazards Not Covered. This company will not be liable for loss by (a) theft; or (b) by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire; or (c) (unless fire ensues, and in that event for the damage by fire only) by explosion of any kind or lightning; or (d) by invasion, insurrection, riot, civil war, or commotion, or (except as hereinafter provided) by military or usurped power, or order of any civil authority, but the company will be liable (unless otherwise provided by endorsement hereon or added hereto) if the property is lost or damaged, by fire or otherwise, by civil authority or military or usurped power exercised to prevent the spread of fire not originating from a cause excepted hereunder and which fire otherwise probably would have caused the loss of or damage to the insured property.

Matters Avoiding Policy. This entire policy shall be void, (a) if the insured has concealed or misrepresented any material fact or circumstances concerning this insurance or the subject thereof; or (b) in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

Unless otherwise provided by agreement endorsed hereon or added hereto, this entire policy shall be void, (a) if the insured now has or shall procure any other insurance,

whether valid or not, on property covered in whole or in part by this policy, or (b) if the interest of the insured be other than unconditional and sole ownership, or (c) if the subject of insurance be a building on ground not owned by the insured in fee simple, or (d) if with the knowledge of the insured foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed, or (e) if this policy be assigned before a loss.

Matters Suspending Insurance. Unless otherwise provided by agreement endorsed hereon or added hereto this company shall not be liable for loss or damage occurring (a) while the hazard be materially increased by any means within the control of the insured; or (b) if the subject of insurance be a manufacturing establishment, while it is operated in whole or in part at night later than ten o'clock, or while it ceases to be operated beyond the period of ten consecutive days; or (c) while mechanics or artisans are employed in building or altering or repairing the described premises for more than fifteen days at any one time; or (d) while illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or (e) while there be kept, used or allowed on the described premises (any usage or custom of trade or manufacture to the contrary notwithstanding) calcium carbide, phosphorus, dynamite, nitroglycerine, fireworks, or other explosives; or exceeding one quart each of benzine, gasoline, naphtha or ether; or more than twenty-five pounds of gunpowder; or (f) while a building herein described whether intended for occupation by owner or tenant is vacant or unoccupied beyond the period of ten (10) consecutive days; (g) while the interest in title to or possession of the subject of insurance is changed excepting:—(1) by the death of the insured; (2) a change of occupancy of building without material increase of hazard; and (3) transfer by one or more several co-partners or co-owners to the others.

Such suspension shall not extend the term of this policy nor create any right for refund of the whole or any portion of premium, nor affect the respective rights of cancellation.

Chattel Mortgage. Unless otherwise provided by agreement in writing endorsed hereon or added hereto, this company shall not be liable for loss or damage to any property insured hereunder while encumbered by a chattel mortgage,

but the liability of the company upon other property hereby insured shall not be affected by such chattel mortgage.

Fallen Building Clause. Unless otherwise provided by agreement endorsed hereon or added hereto, if a building or any material part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

Removal When Endangered by Fire. Should any of said property be necessarily removed because of danger from fire, and there is no other insurance thereon, that part of this policy in excess of the value of the insured property remaining in the original location, or, if there is other insurance thereon, that part of this policy in excess of its proportion of the value of the insured property remaining in the original location, shall, for the ensuing five days only, cover said removed property in its new location or locations.

Cancellation. This policy shall be cancelled at any time at the request of the insured, in which case the company shall, upon surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time, without tender of unearned portion of premium, by the company by giving five (5) days' written notice of cancellation to the insured and to any mortgagee or other party to whom, with the written consent of the company, this policy is made payable, in which case the company shall, upon surrender of the policy or relinquishment of liability thereunder, refund the excess of paid premium above the pro rata premium for the expired time.

Duty of Insured in Case of Loss. When a loss occurs the insured must give to this company written notice thereof without unnecessary delay; and shall protect the property from further damage; forthwith separate the damaged and undamaged personal property and put it in the best possible order; and without unnecessary delay make a complete inventory stating as far as possible the quantity and cost of each article, and the amount claimed thereon.

Within sixty days after the commencement of the fire the insured shall render to the company at its main office in California named herein preliminary proof of loss consisting of a written statement signed and sworn to by him setting forth:—(a) his knowledge and belief as to the origin

of the fire; (b) the interest of the insured and of all others in the property; (c) the cash value of the different articles or properties and the amount of loss thereon; (d) all incumbrances thereon; (e) all other insurance, whether valid or not, covering any of said articles or properties; (f) a copy of the descriptions and schedules in all other policies unless similar to this policy, and in that event, a statement as to the amounts for which the different articles or properties are insured in each of the other policies; (g) any changes of title, use, occupation, location, or possession of said property since the issuance of this policy; (h) by whom and for what purpose any building herein described, and the several parts thereof, were occupied at the time of the fire.

If the company claims that the preliminary proof of loss is defective and within five days after the receipt thereof (without admitting the amount of loss or any part thereof) notifies in writing the insured, or the party making such proof of loss, of the alleged defects (specifically stating them) and requests that they be remedied by verified amendments the insured or such party within ten days after the receipt of such notification and request must comply therewith, or, if unable so to do, present to the company an affidavit to that effect.

The insured shall also furnish, if required, as far as it is practicable to obtain the same, verified plans and specifications of any buildings, fixtures, or machinery destroyed or damaged; and the insured shall exhibit to any person designated in writing by this company all that remains of any property herein described and shall submit to examination under oath, as often as required, by any such person, and subscribe to the testimony so given and shall produce to such person for examination all books of account, bills, invoices, and other vouchers, and permit extracts and copies thereof to be made, and in case the originals are lost certified copies, if obtainable, shall be produced.

Ascertainment of Amount of Loss. This company shall be deemed to have assented to the amount of the loss claimed by the insured in his preliminary proof of loss, unless within twenty days after the receipt thereof, or, if verified amendments have been requested, within twenty days after their receipt, or within twenty days after the receipt of an affidavit that the insured is unable to furnish such amendments, the company shall notify the insured in writing of its partial or total disagreement with the amount

of loss claimed by him and shall also notify him in writing of the amount of loss, if any, the company admits on each of the different articles or properties set forth in the preliminary proof or amendments thereto.

If the insured and this company fail to agree, in whole or in part, as to the amount of loss within ten days after such notification, this company shall forthwith demand in writing an appraisal of the loss or part of loss as to which there is a disagreement and shall name a competent and disinterested appraiser, and the insured within five days after receipt of such demand and name, shall appoint a competent and disinterested appraiser and notify the company thereof in writing, and the two so chosen shall before commencing the appraisal, select a competent and disinterested umpire.

The appraisers together shall estimate and appraise the loss or part of loss as to which there is a disagreement, stating separately the sound value and damage, and if they fail to agree they shall submit their differences to the umpire, and the award in writing duly verified of any two shall determine the amount or amounts of such loss.

The parties to the appraisal shall pay the appraisers respectively appointed by them and shall bear equally the expenses of the appraisal and the charges of the umpire.

If for any reason not attributable to the insured, or to the appraiser appointed by him, an appraisal is not had and completed within ninety days after said preliminary proof of loss is received by this company, the insured is not to be prejudiced by the failure to make an appraisal, and may prove the amount of his loss in an action brought without such appraisal.

Options of Company in Case of Loss. This company may, at its option, take all or any part of the property for which insurance hereunder is claimed at its ascertained or appraised value, and may also, at its option, in satisfaction of its liability hereunder, repair, rebuild or replace any building or structure or machine or machinery used therein, with other of like kind and quality, within a reasonable time, upon giving notice within twenty days of its intention so to do after the receipt by it of the preliminary proof of loss, or, if verified amendments have been requested, within twenty days after their receipt, or, within twenty days after the receipt of an affidavit that the insured is unable to furnish such amendments.

There can be no abandonment to this company of any property.

Apportionment of Loss. This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by, and expenses of, removal from the premises endangered by fire, than the amount hereby insured bears to the entire insurance covering such property whether valid or not, or by solvent or insolvent insurers.

Loss, when Payable. A loss hereunder shall be payable in thirty days after the amount thereof has been ascertained either by agreement or by appraisal; but if such ascertainment is not had or made within sixty days after the receipt by the company of the preliminary proof of loss, then the loss shall be payable in ninety days after such receipt.

Non-waiver by Appraisal or Examination. This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof, by assenting to the amount of the loss or damage or by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for.

Subrogation. If this company shall claim that the fire was caused by the act or neglect of any person or corporation, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

Time for Commencement of Action. No suit or action on this policy for the recovery of any claim shall be sustained, until after full compliance by the insured with all of the foregoing requirements, nor unless begun within fifteen months next after the commencement of the fire.

Definitions. Whenever in this policy the word "insured" occurs, it shall be held to include the legal representatives of the insured in case of his death, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage," and wherever the words "the time of loss or damage" are used they shall be deemed the equivalent of "the time of the commencement of the fire."

Sec. 2. There shall be printed on the outside fold of said policy in type not smaller than small pica the following words in this form:

READ THIS POLICY.

Ins. Co. is liable only for actual cash value.

Policy is void in case of any fraud, false swearing, misrepresentation or concealment about material facts.

Policy is void, unless otherwise agreed in writing, if

1st. It is assigned before loss;

2nd. Insured has or shall procure other insurance;

3rd. Any change occurs in location of property;

4th. Insured building is on ground not owned in fee simple by insured;

5th. Insured is not sole and unconditional owner.

Policy is suspended, unless otherwise agreed in writing, if

6th. Described building becomes vacant or unoccupied for 10 days;

7th. Mechanics are employed more than 15 days in repairing same;

8th. Property is or becomes encumbered by chattel mortgage;

9th. Illuminating gas or vapor is generated in or adjacent to described building;

10th. Explosives or prohibited quantities of gasoline, etc., are kept on premises.

Insurance ceases if described building or any material part falls except as result of fire.

Policy does not cover certain enumerated personal property.

Note particularly duty of insured in case of loss;

Also provisions avoiding or suspending policy, including changes of ownership or possession.

Section 238b.—CONTRACTS FOR INDEMNITY AMONG INDIVIDUALS, PARTNERSHIPS OR CORPORATIONS.—Individuals, partnerships or corporations may exchange reciprocal or inter-insurance contracts, providing indemnity among each other from fire loss or from other damage to their own property, in accordance with the following provisions of this act; provided that no individual, partnership or corporation thus exchanging indemnity shall assume on any single risk an amount greater than ten per

cent of the net financial rating of such individual, partnership or corporation; such financial rating to be shown by the reports of a commercial agency having at least one hundred thousand members.

1. Attorney—Certificate.—Such individuals, partnerships or corporations so contracting among themselves shall have the power to appoint an attorney, agent or other representative, and shall, through their attorney, agent or other representative, file with the insurance commissioner of this state a certificate in writing, verified by the oath of said attorney, agent or other representative, setting forth:

(a) The name or title by which said individuals, partnerships or corporations intending to make such contracts shall be known. The insurance commissioner may reject any name or title so submitted when the same is an interference with or too similiar to one already appropriated or likely to mislead the public in any respect and, in such case, a name not liable to such objection must be chosen.

(b). A verified copy of the form of policy, contract or agreement under or by which such indemnity is to be exchanged.

(c) A verified copy of the form of power of attorney or other authority of any said attorney, agent or other representative setting forth the character of such representation and the authority of the such representative.

(d) The location of the office or offices through which said policies, contracts or agreement are to be issued.

(e) Such attorney in fact shall also file a stipulation or agreement in writing that any notice, provided by law or by any insurance policy, proof of loss, summons or other process may be served upon the attorney in fact or upon the insurance commissioner of the State of California, in all actions or in other legal proceedings against such individuals, partnerships or corporations thus exchanging indemnity under the provisions of section 1 of this act. All notices, proofs of loss, summons or other legal process so served shall give jurisdiction

over the persons of such individuals, partnerships or corporations thus exchanging indemnity. Whenever such service of notice, proofs of loss, summons or other process shall be made upon the insurance commissioner, he must within ten days thereafter, transmit by mail, postage paid, a copy of such notice, proof of loss, or summons or other process to the attorney in fact so appointed by such individuals, partnerships or corporations so contracting among themselves and shall be addressed to such attorney in fact at the home or principal office through which such policies are to be issued. The sending of such copy by the insurance commissioner shall be a necessary part of the service of the notice, proof of loss, summons or other process. When any notice, summons or other legal process is served upon the insurance commissioner pursuant to the provisions of this section, the service as to such individuals, partnerships, or corporations thus exchanging indemnity shall be deemed complete at the end of sixty days after the date of the mailing of such copy of such notice, proof of loss, summons or other legal process to the attorney in fact as herein provided for.

2. Examination of Rating of Subscribers.—The attorney, agent or other representative shall, whenever and as often as the same shall be requested, file with the insurance commissioner a statement verified by his oath to the effect that he has examined the commercial rating of the individuals, partnerships or corporations, composing the subscribers in such reciprocal or inter-insurance exchange as shown by a commercial agency having at least one hundred thousand subscribers, and that, from such examination, it appears that no subscriber of such exchange has assumed on any single risk an amount of liability greater than ten per cent of the net financial rating of such subscriber when such risk was assumed.

There shall also be filed with the insurance commissioner by any said attorney, agent or other representative, a written stipulation to the effect that all insurance written by him upon property situated within this state shall be deemed to be

business done in this state and within the terms and subject as to taxation to the provisions of the constitution of this state.

3. Attorney's Certificate of Authority.—The agent, attorney or other representative shall procure from the insurance commissioner a certificate of authority stating that all the requirements of this act have been complied with, and upon such compliance and the payment of a fee of fifty dollars the insurance commissioner shall issue such certificate. Such certificate must be renewed annually, for which a fee of ten dollars shall be paid. Any such certificate may be revoked or suspended by the insurance commissioner if any of such individuals, partnerships or corporations exchanging indemnity under the provisions of this act fail to comply with any or all of the requirements of the law.

4. Annual Statement.—The attorney in fact of such individuals, partnerships or corporations composing such reciprocal or inter-insurance exchange shall file with the insurance commissioner, of this state, on or before the first of March of each year, upon forms to be prepared by the insurance commissioner, a statement which must exhibit the condition and affairs of such exchange on the 31st day of December then next preceding.

5. Examination by Insurance Commissioner.—The insurance commissioner, whenever he deems necessary, must make an examination of the condition and affairs relating to the exchange of indemnity of such individuals, partnerships or corporations composing such reciprocal or inter-insurance exchange, and must make such an examination before issuing its original certificate of authority to do business in this state; or where the home office of the inter-insurance or reciprocal exchange is located outside of the State of California, and when such inter-insurance or reciprocal exchange is licensed by the insurance commissioner or department of the state where such home office

is located, the insurance commissioner shall accept as satisfactory a certificate of compliance issued by the insurance commissioner or department of the state where said home office is located. Such examination shall verify the certificate and statement filed by the attorney in fact. Such exchange must open its books and papers for the inspection of the insurance commissioner, and shall otherwise facilitate such examination, and the commissioner may administer oaths and examine under oath any person relative to the contracts of such exchange, and if he finds the books to have been carelessly or improperly kept or posted he must employ sworn experts to rewrite, post and balance the same at the expense of such individuals, partnerships or corporations composing such reciprocal or inter-insurance exchange. Such examination must be conducted in the county where such individuals, partnerships and corporations composing such reciprocal or inter-insurance exchange has its principal office, and must be private. Whenever the commissioner shall make such examination, the same must be at the expense of the individuals, partnerships and corporations composing such reciprocal or inter-insurance exchange; such expense to be paid in advance, and in the event of refusal to pay such expenses the insurance commissioner may refuse to issue any such certificate of authority, and must revoke any existing certificate of authority authorizing such individuals, partnerships and corporations composing such reciprocal or inter-insurance exchange to execute such contracts of indemnity.

Unincorporated inter-indemnity companies who do not issue policies of insurance, who do not charge expenses of management except in liquidation of losses, nor accept premiums from its members shall be exempt from the provisions of this act.

6. Void Policies.—All policies and insurance contracts or contracts of indemnity upon a risk or risks situated in the State of California, held by an individual, partnership

or corporations as a subscriber of any reciprocal or inter-insurance exchange, which exchange is not authorized to do business in the State of California, shall be null and void; provided, that any insurance agreement or agreement for indemnity on goods in transit or the property of common carriers used by such common carriers in the transaction of their business shall be deemed not rendered void.

Act of the Legislature, approved May 1, 1911; in effect July 1, 1911.

Fire Insurance Agents.

Section 239.—APPOINTMENT AND AUTHORITY OF AGENTS.—It is not necessary that the agent of a fire insurance company should have or produce a written appointment, for his agency may be shown in many other ways. The fact of his agency may be inferred from the relations he sustains to the company, from the course of prior dealings and transactions connected with it, and from the acts of the company with reference to the particular policy in question. The agent's authority may be actual or ostensible. He may possess or show an appointment in writing, or the company may accept the fruits of his labors, and knowingly permit him to hold himself out publicly as the company's agent. In either case the company will not be allowed to shield itself behind the defense that he was not really an agent. The powers of the agent are prima facie coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals. An insurance company, establishing a local agency, must be held responsible to the parties with whom it transacts business for the acts and declarations of the agent within the scope of his employment.

Section 239a.—SURPLUS LINE BROKERS.—A surplus line broker is one licensed by the insurance commissioner to act as broker in soliciting, negotiating, and effecting

insurance under conditions hereinafter stated, to be procured from or placed with companies not authorized to transact such business in this state.

1. License of Surplus Line Broker.—The insurance commissioner may issue a license authorizing any individual to act as surplus line broker from its date until the first of July following, on the following conditions:

(a) Payment to the insurance commissioner of a fee of twenty-five (\$25.00) dollars in advance.

(b) Delivery to the insurance commissioner of a bond to the State of California in the sum of five thousand (\$5000) dollars.

A surplus line broker, after having procured from and placed with authorized companies the total amount of insurance obtainable on any property from a majority of all authorized companies, may place the excess of insurance desired over such amount with unauthorized companies. No insurance is to be procured from or placed with unauthorized companies by any one except by a surplus line broker and under such conditions.

2. Duties of Surplus Line Broker.—The following are the duties of a surplus line broker with which he is required to comply:

(a) To maintain in good faith an office in this state.

(b) To keep in said office books of account correctly showing in separate accounts all business transacted with unauthorized companies. Said books are to specify the dates of such insurance going into effect, the name of the insurers and of the insured, the gross premiums payable therefor, the terms, character of insurance and locations of the insured property. They shall also contain statements in the same detail of all such insurance canceled, or on which premiums have been increased or reduced and the amounts of additional or of return premiums thereon. Such books are to be open at all times for the inspection of, and examination by, the insurance commissioner, or any one appointed by him for said purpose.

(c) Within one week after the surplus line brokers shall have obtained knowledge of the completion of the procurement of insurance on any property from an unauthorized company, he shall file with the insurance commissioner a true report showing the name of the insured and of the insurers, the character of the insurance, location of the property, gross premium payable therefor, and the date of such insurance taking effect and the term thereof; also a list of authorized companies comprising a majority thereof from whom the insurance so effected was not obtainable. As soon as practicable after any such insurance has been canceled or any premium thereon has been increased or reduced, such surplus line broker shall file with the insurance commissioner a report thereof in the same detail as above required in the case of the report above referred to.

(d) On or before the first day of March of each year he shall file with the insurance commissioner a sworn statement of all business transacted under his license during the last preceding calendar year ending December 31st. Such statements shall contain true accounts of the gross amount of insurance procured from and placed with unauthorized companies during said calendar year, the gross premiums charged therefor including additional insurance premiums, and the gross amount of all insurance canceled during said year, and the gross return premiums thereon. Such statements shall also include additional premiums charged during said calendar year on insurance previously effected and the gross return premiums during said calendar year on insurance previously effected.

(e) All such reports and statements shall be made on blanks to be furnished surplus line brokers by the insurance commissioner on application therefor.

(f) On or before the 1st day of June of each year said surplus line broker shall pay to the insurance commissioner for the use of the State of California three (3%) per cent of the gross premiums charged, less three (3%) per cent of all return premiums on policies canceled, or upon which

the premiums have been reduced during the year ending December 31st last preceding.

3. Revoking License.—The insurance commissioner shall revoke the license of any surplus line broker who wilfully fails or refuses to perform any of his duties hereinabove specified.

If in the opinion of the insurance commissioner the solvency of any surety on a bond hereby required has become impaired or doubtful, he shall notify the surplus line broker in writing, and unless within ten (10) days after receipt of such notice the solvency of such surety is proved to the satisfaction of the insurance commissioner, or a new bond is substituted therefor, said insurance commissioner shall revoke the license of the surplus line broker.

The removal of the office of the surplus line broker from this state, or the removal therefrom of his accounts of his business as such, or the closing of his said office for a period of more than twenty (20) consecutive days, shall constitute a termination of the authority of said surplus line broker, and shall be tantamount to an express revocation of his license, whether or not the insurance commissioner thereafter revokes the same.

No new license shall be issued to any surplus line broker whose license has been revoked for any reason other than the insufficiency of his sureties, within the period of one year after such revocation, and until all indebtedness of said surplus line broker on former business has been paid to said insurance commissioner.

4. Examination of Policies.—Every insured for whom insurance has been effected with unauthorized companies shall produce for examination by the insurance commissioner, whenever requested by him, in writing, so to do, all policies, contracts, and other documents evidencing such insurance, and disclose to him the true amount of the gross premiums paid or agreed to be paid therefor, or upon refusal so to do, he shall forfeit to the State of California, the sum of two hundred (\$200) dollars for each refusal.

All policies and other contracts of insurance issued without full compliance by all parties concerned with the laws of this state, shall be null and void.

Act of the Legislature, approved May 1, 1911; in effect July 1, 1911.

Section 240.—BROKERS OR AGENTS.—The question arises as to the difference between a broker and an agent, in suits where a company makes the defense that the person claimed to have acted as its agent was not such in fact, but did act for the owner of the property. Where it is shown that the owner of the property solicits an insurance agent to procure insurance for him, and himself pays the commission, such agent will be deemed not the agent of the company, but of the insured. He will be deemed a mere broker, making a bargain for the insured, and receiving a commission from him for so doing. But where the company employs a person to solicit insurance, and provides him with blanks and other papers, and pays him a commission on the business he brings in, he will be deemed the agent of the company, and not of the insured. In following sections will be found illustrations of some leading principles of agency in fire insurance, as decided by the Supreme Court of California.

Section 241.—AGENT WAIVING FORFEITURE.—Simon Silverberg sued the Phenix Insurance Company upon a policy of fire insurance. When the case was tried, it appeared that soon after the occurrence of the fire, the company being notified of the fact, directed the proofs to be made out, which was done, and subsequently required Silverberg to present witnesses and vouchers. After these witnesses and vouchers had been examined at length, the company said the proofs were satisfactory, instructed Silverberg to make out formal proofs of loss, and said that the money would be paid at the expiration of the sixty days allowed by the policy for the payment of the loss. Upon the expiration of sixty days, a demand being made for the money, the company declared that the policy had been avoided by a breach

of its conditions, and refused to pay. The question was whether the company's agents had waived the condition of the policy of which it was claimed there had been a breach. The facts were, that the agents of the company had full knowledge of all the facts upon which the forfeiture was based, and with this knowledge informed Silverberg that the insurance would be paid, and then refused to pay and claimed forfeiture. The Supreme Court held that the acts of the company's agents in examining witnesses and vouchers, and then expressing satisfaction and a willingness to pay, after full knowledge of all the facts, constituted a waiver of any forfeiture by Silverberg resulting from a breach of the conditions of the policy. The agents of the company were authorized, there being no provision in the policy to the contrary, to modify or altogether waive a condition of the policy. (Decided in the case of *Silverberg vs. Phenix Insurance Company*, which decision is printed in Volume 67 of the *California Reports*, page 36.)

Section 242.—AUTHORITY OF LOCAL AGENT.—

A local agent of a fire insurance company, who has authority to make a consummated and binding contract of insurance by countersigning and delivering its policy, and to extend a limited credit for the premium, has the power of the company to waive a condition in the policy that it shall not be binding until the premium is actually paid, and does waive such condition by delivering the policy unconditionally under an agreement for credit, though the term of credit given be in excess of his actual authority.

Section 243.—OSTENSIBLE GENERAL POWER OF LOCAL AGENT.—A local agent of a fire insurance company who is clothed with ostensible general authority to solicit applications, receive proposals, make contracts for insurance, receive first premiums, and to countersign and deliver policies within certain limits, is presumed to have the general power of the company within those limits to waive conditions precedent to the liability of the company

upon policies which he is authorized to countersign and deliver. Such local agent is presumed to have power co-extensive with the business intrusted to his care, and his powers will not be narrowed by limitations not communicated to the person with whom he deals; and he may bind his principal by any acts or contracts within the general scope of his apparent authority.

Section 244.—KNOWLEDGE OF AGENT IS THE KNOWLEDGE OF COMPANY.—Whether an agent has general or only particular powers is not determined by simply calling him an agent. Where any fact which would constitute a breach of a condition precedent to any liability of the company on the policy is fully known to an agent of the company, local or general, who is authorized to consummate the contract of insurance, the knowledge of such agent is the knowledge of the company; and if the agent, with a knowledge of the breach of the condition, still recognizes the validity of the policy, this constitutes a waiver by the company of the forfeiture, and also a waiver of the general requirement that conditions can only be waived in writing indorsed on the policy itself. (Decided by the Supreme Court of California in the case of *Farnum vs. Phoenix Insurance Company*, which decision is printed in Volume 83 of the California Reports, page 260.)

Section 245.—ORAL WAIVER OF INDORSEMENT BY LOCAL AGENT.—A local agent who is clothed with general power to consummate contracts of insurance within a certain territory stands in the stead of the insurance company, and represents its whole power to give validity to the contracts which he is authorized to execute and deliver, and to waive conditions precedent to its liability by oral agreement, so far as to estop the company from questioning its original liability by reason of non-indorsement of the waiver upon the policy when delivered.

Section 246.—APPLICATION MADE OUT BY AGENT OF COMPANY.—Insurance companies who do business through the medium of agents are responsible for their acts within the general scope of the business intrusted to their care, and no limitations of their authority will be binding on parties with whom they deal, which are not brought to their notice. When the agent undertakes to prepare the application for the insured, he will be regarded in doing so as the agent of the insurance company, and not of the insured; and any misstatements contained in the application, of which the insured is ignorant, will not be fatal to the policy. (Decided by the Supreme Court of California in the case of *Wheaton vs. North British and Mercantile Insurance Company*, which decision is printed in Volume 76 of the *California Reports*, page 415.)

Section 247.—FRAUD OF AGENT—DISOBEDIENCE OF INSTRUCTIONS.—A fire insurance company is bound by the acts, omissions, or frauds of its agent when acting within the scope of his employment, though he may have disobeyed the instructions received; and the company cannot be permitted to derive any advantages from the fraud of the agent in the manner of transacting its business, upon the claim that the agent's fraudulent conduct was not authorized. Therefore, fraudulent concealment of facts, or fraudulent representations of an agent to the insured, binds the company he represents, when the insured has no notice of any limitations upon the authority of the agent in the transaction. (Decided by the Supreme Court of California in the case of *Stockton Harvester Works vs. Glenn's Falls Insurance Co.*, which decision is printed in Volume 98 of the *California Reports*, page 557.)

Section 248.—WAIVER OF PETROLEUM CLAUSE BY AGENT.—A condition in a policy for loss occurring while petroleum is kept or used on the insured premises is waived, if the general agent of the insurer, having knowledge at the time the insurance was effected that petroleum was

kept and used, consented thereto, and represented to the insured that such use would not vitiate the policy. (Decided by the Supreme Court of California in the case of *Herman Kruger vs. Western Fire and Marine Insurance Company*, which decision is printed in Volume 72 of the California Reports, page 91.)

Section 249.—WAIVER CONTINUES DURING RENEWAL OF POLICY.—A waiver of conditions in the policy, made by the agent of the company at the time the insurance was originally effected, continues during the subsequent renewals of the policy.

Section 250.—AUTHORITY OF SPECIAL AGENT.—Power given to a special agent of a fire insurance company to receive proposals for insurance, and to receive premiums, subject to the rules of the company and instructions given by its general agent, includes power to make a verbal contract for insurance, sanctioned by instructions from the general agent.

Section 251.—ORAL PROMISE OF POLICY.—A declaration by the special agent to the insured, made at the time of his application for insurance, that it was unnecessary for him to make a written application, as the general agent was asking for the insurance, and a promise by the special agent that a policy should be given to the insured which would cover the insurance applied for to the date of the oral application, taken in connection with letters from the general agent asking if the insurance would be required, is sufficient proof of the special agent's authority to bind the company for insurance from the date of the oral application. (Decided by the Supreme Court of California in the case of *Harron vs. City of London Fire Insurance Co.*, which decision is printed in Volume 88 of the California Reports, page 16.)

Section 252.—AGENT'S KNOWLEDGE OF FORMER INSURANCE.—Many policies contain the provision, that "if any other insurance has been or shall hereafter be made upon the said property and not consented to by this company in writing hereon, this policy shall be null and void." But notwithstanding this provision, where there is former insurance, which is not noted on the policy in question, if the agent of the company knows of the former insurance, and the policy is issued, such knowledge of the agent is knowledge of the company, and the policy is valid.

Section 253.—OFFER TO RENEW POLICY.—Where the local agent of a fire insurance company has no actual or ostensible authority to contract for the renewal of a policy, a proposal made to such agent for a renewal is, until communicated to and accepted by the insurance company, nothing more than a mere offer to renew the policy; and the fact that the agent promised to communicate the offer to the company, and did not do so until after the loss, does not create a binding contract of renewal. (Decided by the Supreme Court of California in the case of *Stewart vs. The Helvetia Swiss Fire Insurance Co.*, which decision is printed in Volume 102 of the California Reports, page 218.)

Section 254. — UNAUTHORIZED CONTRACT OF LOCAL AGENT.—The local agent of the New Zealand Insurance Company at Fresno was not authorized to make contracts, but sent all applications to the company at San Francisco for acceptance; he received an application, however, and told the insured that the insurance would begin at that time; before the application was mailed from Fresno the building was burned; the company was sued for the loss, but the Supreme Court said, that as the local agent had no actual or ostensible authority to make a contract of insurance, and the building being a saloon, which class of risks the company did not take, the company was not liable for loss; and it made no difference that at the time when the application was made the special agent of the company,

who had no authority to enter into contracts, was present and approved of it. (Decided by the Supreme Court of California in the case of O'Brien vs. New Zealand Insurance Company, which decision is printed in Volume 108 of the California Reports, page 227.)

Section 255.—WAIVER FROM KNOWLEDGE OF AGENT.—The act of the agent of a fire insurance company, in issuing a policy on an application alleging unconditional ownership, is a waiver of such condition, where the agent knows at the time that the property is mortgaged, and that a foreclosure suit is pending. (Decided by the Supreme Court of California in the case of Breedlove vs. Norwich Union Fire Insurance Co., which decision is printed in Volume 24 of the California Reports, page 164.) A is the true owner of property which stands in the name of B. A informs the insurance company of the condition of the title, and has the property insured in the name of B, and the loss made payable to A "as his interest may appear." It was stipulated in the policy that it should be void if the interest of the insured should be other than unconditional and sole ownership. Held by the District Court of Appeals, that the issuance of the policy upon the known facts was a waiver of all conditions inconsistent therewith, and the true owner was entitled to recover the amount of the policy, although the title to the property stood in the name of another. The company was informed of this before the policy was issued, and was bound by that knowledge. (Decided by the California District Court of Appeals in the case of Loring vs. Duchess Insurance Company, which decision is printed in Volume I, California Appellate Decisions, page 128.)

Life Insurance.

Section 255a.—INSURABLE INTEREST.—The contract of life insurance must be based upon an insurable interest, and this insurable interest must arise from the relation

of the party taking the insurance to the insured, either as surety or debtor, or from the ties of blood or marriage, so that from the relation thus established there may be some expectation of benefit or advantage in the continuance of the insured life. Every person has an insurable interest in the life of himself; and in the life of any person on whom he depends wholly or in part for education or support; and in the life of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death might delay or prevent the performance; and in the life of any person upon whose life any estate or interest vested in him depends. A person who is not related to another has no insurable interest in his life, unless the latter is his debtor, or in some other pecuniary way so connected with him as to afford reasonable ground for expecting some relief or advantage from the continuance of the life of the insured. The result of this rule is, a person cannot take insurance upon the life of a mere stranger, not related, or under obligation in some pecuniary way; for such a policy would be nothing more nor less than a wager or gambling policy, which the law does not allow. Husband and wife have an insurable interest in the lives of each other, and so do father and child. It has been held by the courts that a stepson has no insurable interest in the life of his stepfather, where he has a separate home and family of his own, and is not a creditor, nor in any way dependent upon or responsible for the support of the stepfather. An interest, to be insurable, must be an interest in favor of the continuance of the life, and not an interest in its loss or destruction. Public policy does not allow any one having no insurable interest to be the owner of a policy of insurance upon the life of a human being. The public has an interest, independent of the consent and concurrence of the parties, that no inducement shall be offered to one man to take the life of another.

A person has such an insurable interest in his own life that he may insure it for the benefit of his heirs, or even for the benefit of a stranger.

Civil Code, Section 2763.

Section 255b.—CREDITOR'S INTEREST.—A creditor may lawfully take out a policy on the life of his debtor in an amount sufficient to cover the debt, with interest.

Section 255c.—DELIVERY OF POLICY.—Actual delivery of the policy into the hands of the insured is not necessary in order to bind the company. If the first premium is paid to and accepted by the company, and a policy issued with intent to deliver to the insured, it is valid and binding even though the insured dies before the policy reaches him. An unconditional delivery of a policy by the company to its agent, for delivery to the insured, binds the company, although the agent never parts with possession of the policy. Possession of the policy by the insured, at his death, is *prima facie* proof that it was duly delivered to him.

Section 255d.—PLACE OF CONTRACT.—It is sometimes important to determine where the law puts the location of a contract, the place where it is deemed to have been made. The rule on this subject is, that the contract is deemed to have been made where the policy is issued. For instance, if the application is sent to the office of the company in New York, and the policy is executed and issued there, it is a New York contract, to be construed according to the laws of New York. If, on the other hand, the policy is executed and issued from the office of the company in the State of California, it is a California contract, to be construed according to the laws of California. It is to be understood, in this connection, however, that it is within the power of the contracting parties, by the express terms of their contract, to establish the place where it shall have effect, and under what laws it shall be construed. If anything appears in the application upon which the policy is issued, or in the policy itself, that discloses an intention that the policy shall be construed according to the laws in force in any other state than the one in which it was actually made and delivered, such intention must govern, and will have the effect, so far as the construction of the contract is concerned, to change

the place of its execution so as to correspond with the intention of the parties.

Section 255e.—INTERPRETATION OF POLICY.—

A policy of life insurance must be interpreted and construed according to the principles which govern other contracts. The intention of the parties is the first thing to be considered, and that intention is to be ascertained from the policy itself, if possible. The courts do not favor forfeitures, and a policy of insurance will always be construed in favor of upholding the contract, if such construction is possible from the language used. All conditions involving forfeitures will be construed strictly as against the company, and most favorably for the insured. When a policy is capable of two meanings, that which is most favorable to the insured will be adopted by the courts.

Section 255f.—CONDITIONS IN POLICY.—The conditions in a life insurance policy, to be observed by the insured—as, for payment of premiums, or against use of alcoholic beverages, and other stipulations—must be adhered to by the insured, at the risk of rendering the policy void if he does not observe them. But the courts construe the conditions named in a policy most strongly against the company, and in favor of the insured. There are conditions stated, too, the violation of which does not render the policy absolutely void, but only make it voidable, at the option of the insurance company. Of these, the conditions prohibiting the insured from traveling, or living in certain places, may be cited as illustrations of the kind of conditions the breach of which renders the policy voidable, and not void. The company, upon the breach of such conditions, may proceed to declare a forfeiture, and cancel the policy; or it may, by accepting further premiums, or recognizing the continued life of the policy, evidence a waiver on its part of the voidable conditions.

Section 255g.—WAIVER OF CONDITIONS.—A waiver of the conditions in a policy may be either verbal or in writing. If in writing, the writing speaks for itself. But a waiver may be shown by acts and circumstances. Where the agent of a life insurance company, having knowledge of some act on the part of the insured constituting a breach of condition, proceeds to treat the policy as valid, by accepting premiums, or in some other way ignoring the breach, the breach of condition will be considered as having been waived by the company. If an insurance company, having knowledge of facts rendering its policy voidable, deliberately claims and exercises a right under the policy, it waives all right to avoid it because of such facts. An insurance company is not permitted to collect premiums with full knowledge of facts which might avoid the policy (and knowing that the insured continues to disregard a provision working a forfeiture), and then to deny the validity of the policy when a loss occurs. The company will always be bound by its waiver of the conditions in a policy. If an insurance company, after knowledge of any default for which it might terminate the policy, enters into negotiations or transactions with the insured which recognize the continued validity of the policy and treat it as still in force, the right to claim a forfeiture for such previous default is waived.

Section 255h.—REPRESENTATIONS BY INSURED.—A person who makes an application for life insurance must not make false representations about any material matter, for if he does so the policy can be canceled. False answers about the health of the applicant will render a policy voidable. Concealing the truth, as when the applicant states that he is in good health, when in fact he is suffering from disease, will be good reason for canceling a policy.

The law presumes that all the answers to questions contained in an application are true and correct, and it is for the company to show that the statements which it claims as false really are so, if it seeks to avoid a policy on the ground of false representations by the insured.

Section 255i.—EFFECT OF DISEASE OF APPLICANT ON POLICY.—A disease known to the applicant for a policy, but not discovered by the agents of a company, and concealed by the applicant, will be ground for forfeiture. But, if the applicant is afflicted with a disease and does not know it, his failure to communicate the fact will not be regarded as a fraud upon the insurance company.

Section 255j.—MEANING OF “GOOD HEALTH.”—The health of body required at the time of making application for life insurance is not perfect and absolute health, nor is it necessary that it should exclude all disorders and infirmities which may possibly shorten life. Only an ordinary and reasonable degree of health is required, in order to make the insurance effective. The term “good health,” when used in an application for a policy of life insurance, means that the applicant has no grave, important, or serious disease, and is free from any ailment that seriously affects the soundness and healthfulness of the system. A mere temporary indisposition, which does not tend to weaken or undermine the constitution of the person at the time of insuring, does not render a policy void.

Section 255k.—MALT AND SPIRITUOUS BEVERAGES.—The question, “Do you use malt or spirituous beverages?” asked of an applicant for life insurance refers to a customary and habitual use, and not to a single or occasional act or use; and the question, “Have you always been temperate?” means moderation, and an abstinence from excessive or injurious use, and not total abstinence from the use of malt or spirituous liquors.

Section 255l.—PAYMENT OF PREMIUMS.—Notice must be given to the insured of the time when premiums become due, and the premiums must be paid promptly, in order to save the policy from forfeiture, unless the company waives payment when due and extends the time.

Section 255m.—CREDIT FOR PREMIUMS.—A provision in a policy of insurance, that the company shall not be liable until the premium is actually paid, is waived by an unconditional delivery of the policy to the insured as a completed contract under an express or implied agreement that credit shall be given.

Section 255n.—FORFEITURE FOR NON-PAYMENT OF PREMIUM.—If the premium is not paid, after notice from the company, the policy will be forfeited. But when an insurance company receives payments of premiums when they are overdue, and when it might refuse payment and declare the policy forfeited under its "by-laws," it cannot accept and keep the money, and still insist upon a forfeiture.

Forfeiture of a life insurance policy for non-payment of premium when it becomes due cannot be insisted upon by the company, when by the terms of the policy the insured is entitled to share in the profits, and therefore cannot know without notice what amount he is required to pay, and no notice has been given to him of what sum the company claims to be due on the policy.

Section 255 o.—REVIVAL OF FORFEITED POLICY.—A policy of life insurance, forfeited for non-payment of premium at maturity, can only be revived, as far as the insured is concerned, by the actual payment and acceptance of the overdue premium, or by a contract with the company based upon a sufficient consideration to revive and reinstate the insurance.

A reinstatement of the insurance after a forfeiture is not the making of a new contract, where no different terms are agreed upon. It simply restores the old policy.

Section 255p.—PROOF OF DEATH.—The requirements of the policy as to proof of death must be complied with by the beneficiary before he can collect the insurance. If the policy states the proof which must be furnished, and the time, its directions must be obeyed. If the policy does

not state the particular proof, or the manner of making proof, the fact of death must be shown to the company with reasonable definiteness and certainty, in any reasonable manner.

Failure to furnish proof of death within the time limited by a life insurance policy is waived, when the company makes a proposal to settle, or absolutely refuses to pay, or denies all liability, or asks for additional proof without making objection that the proof given was not furnished in time.

Section 255q.—SUICIDE.—In the law of insurance, suicide is not, as a rule, recognized as a ground of exemption from liability, or for the forfeiture of a policy issued for the benefit of a third person, unless it is expressly so provided in the policy. Where a policy of life insurance contains a condition that in case the insured shall die by his own hand, whether sane or insane, the policy shall become null and void, the suicide of the insured will prevent a recovery on the policy. But the presumption is against the suicide of the insured, and the company, if it refuses to pay on that ground, must itself furnish satisfactory proof that the insured did die by his own hand. Nothing appearing to the contrary, the legal presumption is that a man died from a natural cause, and not from an act of self-destruction. The mere fact of death in an unknown manner creates no presumption of suicide.

Section 255r.—ASSIGNMENT OF POLICY.—A policy of life insurance may be assigned and transferred, and the assignee will stand in the place of the insured, be subject to his liabilities, and entitled to his benefits. The assignment may be an absolute sale and transfer, or the policy may be assigned as security for a debt. Notice of the assignment is not required to be given to the company, unless the policy contains a condition requiring such notice to be given.

A policy on the life of the insured payable to his legal representatives may be assigned by him, with the consent of the company; and in such case the rights of the assignee

are paramount to the claims of the heirs or personal representatives of the insured.

The assignment may be to relatives of the insured, or it may be to a stranger who has no insurable interest in the life of the insured.

If a policy of insurance expressly stipulates that no assignment shall be valid without the consent of the company, an assignment without such consent is without effect. The insured, in this case, is presumed to have taken out the insurance with knowledge of the stipulation, and is bound by it.

Assignment of a policy, made payable to certain described beneficiaries, should be with the consent of the beneficiaries.

Civil Code, Sections 2764, 2765.

Section 255s.—BENEFICIARIES OF LIFE INSURANCE.—The insured may have the policy made payable to his estate, or to particular persons named in the policy as beneficiaries.

A policy of life insurance creates vested interests in the beneficiaries named therein, and although the contract may be canceled by the company in case the insured fails to keep the stipulations, the insured himself cannot revoke the contract without the consent of the beneficiaries.

The proceeds of a policy of life insurance made payable to the heirs of an insured husband go to his widow and children, in the proportion provided by the laws of the state for distribution of estates.

Section 255t.—DEDUCTION OF UNPAID PREMIUMS.—The insurance company is entitled to have the amount of premium remaining due for the current year, after the death of the insured, deducted from the amount of the policy before paying it.

(a) PAID-UP LIFE INSURANCE.—Every contract or policy of life insurance hereinafter made by any person or corporation, with or upon the life of a resident of this

state, and delivered within this state, shall provide, in event of default of any premium payment after three full annual premiums shall have been paid on such policy, that without any action on the part of the insured, the net value of such policy based upon the reserve basis used in computing the premiums and values thereunder (the policy to specify the mortality table and rate of interest so adopted), which net value shall be at least equal to its entire net reserve at the date of default, including that of dividend additions, if any, based upon a standard not lower than the American experience tables of mortality with interest at three and one-half per cent yearly, less a surrender charge of not more than two and one-half per cent of the face amount of the policy and of any existing dividend additions thereto and less any indebtedness to the company on or secured by the policy, shall be applied as a single premium to the purchase of one of the following stipulated forms of insurance.

First.—Paid-up non-participating term insurance in the amount of the face of the policy, plus dividend additions, if any, for such a period as the net value outlined above will purchase at the net single premium, at the attained age of the insured at the time of the lapse, based upon the reserve basis described in the policy; provided, however, that under endowment contracts the term shall not extend beyond the endowment period named in the original contract, and the excess value, if any, shall be applied as a net single premium to purchase in the same manner paid-up pure endowment insurance, payable at the end of the endowment period named in the contract if the insured be then living; or

Second.—Paid-up non-participating term insurance in the amount of the face of the policy, plus dividend additions, if any, and less any outstanding indebtedness, for such a period as the net value outlined above will purchase at the net single premium, at the attained age of the insured, based upon the reserve basis described in the policy; provided, however, that under endowment contracts the term shall not extend beyond the endowment period named in the original contract, and the excess value, if any, shall be applied as a net single premium

to purchase in the same manner paid-up pure endowment insurance, payable at the end of the endowment period named in the contract if the insured be then living; or

Third.—Paid-up non-participating insurance payable at the time and on the conditions named in the policy for such an amount as the net value outlined above will purchase at the net single premium, at the attained age of the insured, based upon the reserve basis described in the policy.

Provided, however, that the policy may be surrendered to the company, at its home office, upon due application by the legal owner thereof, within one month after date of premium default, for a specified cash value which shall be at least equal to the sum which would be otherwise available for the purchase of the automatic form of insurance provided therein; and provided further that the company may defer payment of such cash value for not more than six months after application therefor is made.

No agreement between the company and the policyholder or applicant for insurance contrary to the foregoing shall be held to waive any of the provisions provided above.

Any life insurance policy issued upon the life of a resident of this state, and delivered within this state, which does not contain an automatic non-forfeiture value in conformity with the foregoing shall be construed as granting non-participating term insurance, as provided in paragraph first of this section, and such a benefit shall be read into the contract.

The provisions of this section shall not apply to annuities, industrial policies, or to term contracts issued for periods of twenty years or less.

Act of the Legislature, approved May 1, 1911.

Life Insurance Agents.

Section 255u. — PRINCIPLES OF AGENCY.—The principles of agency stated under the head of "Fire Insurance Agents" apply equally to agents of life insurance companies. They bind their principals in the same way; their representations as to the business entrusted to them have the same

effect; they may waive conditions of the contract to the same extent; and, as there is no special rule applying particularly to life insurance agents, it will be sufficient, as to them, to refer to the subject of "Fire Insurance Agents."

Accident Insurance.

Section 255v.—THE POLICY.—A policy of accidental insurance is issued and accepted for the purpose of furnishing indemnity against accidents and death caused by accidental means, and the language of the policy must be construed with reference to the subject to which it is applied. In the construction of an accident insurance policy, however, its provisions will be usually interpreted most favorably for the insured, in case of doubt or uncertainty in their terms. If a stipulation or exception in a policy of accident insurance is capable of two meanings, that will be adopted which is most favorable to the insured. In other words, if there is doubt or uncertainty as to the meaning of terms employed in a policy of accident insurance, the language must be liberally construed in favor of the insured, so as not to defeat, without a plain necessity, his claim to indemnity, which, in effecting the insurance, it was his object to secure.

Section 255w.—DEFINITION OF ACCIDENT—Some difficulty has been experienced by the courts in arriving at a satisfactory and comprehensive definition of the word "accident" as used in insurance policies. Worcester defines "accident" to be "an event proceeding from an unknown cause, or happening without the design of the agent." Webster's definition is, "An event that takes place without one's foresight or expectation; an event which proceeds from an unknown cause, or is an unusual effect of a known cause, and therefore not expected."

The definition of "accident" generally adopted is, an event happening without any human agency, or, if happening through human agency, an event which, under the circumstances, is unusual, and not expected by the person to whom it happens.

Disease, produced by the action of a known cause, cannot be considered accidental. In the term "accident" is necessarily involved some violence, some unusual and unforeseen cause.

Section 255x.—DEATH BY ACCIDENTAL MEANS.—"Death by accident" means death from an unexpected event which proceeds from an unknown and unforeseen cause, happening without the design of the person to whom the accident occurs. Unnatural death, the result of accident of any kind, imports an external and violent agency as the cause.

Section 255y.—HANGING ONE'S SELF WHILE INSANE.—It has been held that it is accidental death, where one hangs one's self while insane, unconscious of the act, and incapable of an intelligent intention to take one's own life.

Section 255z.—BEING KILLED BY ROBBERS.—Death by being waylaid and assassinated by robbers makes the company liable, under a policy insuring the person so killed against death through "external, violent, or accidental means."

Section 255aa.—DEATH BY DROWNING.—Drowning is a death from external violence, in the meaning of an accident insurance policy.

Section 255bb.—DEATH FROM FRIGHT.—Where the insured was driving upon a public street, and his horse became frightened by an unsightly object, without upsetting the carriage or coming in contact with anything, and was at length brought under control, but the insured was apparently greatly endangered at the time, and suffered so severely, either from fright or strain caused by physical exertion in restraining the horse, that he died within an hour afterward; it was held that his death was caused

by "bodily injuries effected through external, violent, and accidental means."

Section 255cc.—DEATH BY FALLING.—Where the insured while traveling by rail, during a stoppage of a train on a bridge, went to the front platform of the coach in which he was riding and stepped off, falling through a hole in the floor of the bridge and meeting his death, this was held to be death by accident in the meaning of the policy.

If a temporary and unexpected physical disorder causes the insured to fall and injure himself, the injury is received through violent, external, and accidental means, and the insurance company is liable therefor.

Section 255dd.—TAKING POISON BY MISTAKE.—The words "taking poison," as employed in a clause of an accident insurance policy, exempting the company from liability for death from "taking poison," mean the voluntary, intentional taking of poison, and do not include cases of accidental poisoning. Hence, the company is liable for the death of one who, by mistake, drinks carbolic acid for peppermint, which he wishes to take for some ailment, and dies from the effects of the poison.

Section 255ee.—DEATH BY MURDER.—Whether the company will be liable for death by murder, in any case, depends upon the wording of the policy. If the policy exempts the company from liability for "intentional injury inflicted by the insured or any other person," then the company will not be liable for the murder of the insured. If, however, the policy covers merely "injuries from external violence and accidental means," without the exception above noted, the company will be liable when the insured is murdered.

Section 255ff.—DEATH BY INHALING GAS.—The inhaling of gas, within the exemption of insurance policies, means a voluntary and intelligent act of the insured, and

not an involuntary and unconscious act. Therefore, if the insured while he sleeps is accidentally overcome by inhaling gas without intention or connivance on his part, the company will be liable.

Section 255gg.—LOSS OF HAND.—Under a policy making the company liable for “loss of hand” it is not necessary to show that the entire hand is gone. If the hand is so injured as to become useless as a hand, the company is liable as for an entire loss.

Section 255hh.—LOSS OF FEET.—Under a policy agreeing to pay an indemnity for loss of “two entire feet,” it is not necessary to show, in order to make the company liable, that the legs or feet were severed from the body. It is only necessary to show that the insured has lost the use of the feet as members of his body; as, where through accident the lower part of the body has become totally paralyzed, and thus the use of the feet destroyed.

Section 255ii.—LOSS OF BUSINESS.—If a policy provides that the insured shall be paid a certain sum per week, for the immediate, continuous, total loss of such business time as may result from an accidental injury, he is entitled to recover if his injury is such that he loses his time in the business in which he was engaged when insured, though there are other business pursuits from which the accident would not incapacitate him.

Section 255jj.—TOTAL DISABILITY.—The insured suffers a total disability, if his injuries are of such character that common care and prudence require him to desist from the transaction of any business pertaining to his occupation, so long as it is reasonably necessary to effect a cure. Ability to occasionally perform some single and trivial act of business does not render his disability partial instead of total, provided he is unable substantially, to a material extent, to transact any kind of business pertaining to his occupation.

Section 255kk.—“DISEASE” AND “BODILY INFIRMITY.”—The words “disease” and “bodily infirmity,” as used in an accident insurance policy, exempting the company from liability for injury from such cause, mean, practically, the same thing. They refer to some ailment or disorder of a somewhat established and settled character, some physical disturbance to which the insured is subject, and of which an attack causing him an injury is, in some measure, a recurrence; and they have no reference to some temporary disorder, new and unusual, arising from some sudden and unexpected derangement of the system.

Section 255 ll.—DISEASE PRODUCED BY KNOWN CAUSE.—Disease produced by the action of a known cause cannot be considered as accidental. Thus, disease, or death, engendered by exposure to heat, cold, damp, the vicissitudes of climate, or atmospheric influences, cannot properly be said to be accidental.

Section 255mm.—CONDITION AGAINST CHANGE OF OCCUPATION.—Where there is a condition in a policy against change of occupation by the insured, the word “occupation” has reference to the vocation, trade, or calling which he is engaged in for hire or for profit; and the condition does not preclude him from the performance of acts and duties which are incidentally connected with the life of men in any or all occupations, or from engaging in mere acts of exercise, diversion, and recreation.

Section 255nn.—VOLUNTARY EXPOSURE TO DANGER.—The insured cannot recover upon an accident insurance policy if he has voluntarily and intentionally exposed himself to danger from which the injury resulted. Voluntary exposure to unnecessary danger, within the meaning of an accident insurance policy, is a conscious or intentional exposure involving gross or wanton negligence on the part of the insured. The intention of the insured to voluntarily expose himself to unnecessary danger may be inferred from

his acting so recklessly and carelessly as to show an utter disregard of known danger, or from his taking the risk of a danger which is so obvious that a prudent man, exercising reasonable forethought, would not have taken it.

Section 255 oo.—PROOF OF INJURY OR DEATH.

—Proof of injury or death must be given in the manner and at the time specified in the policy. The company may waive the proof, either expressly, or by conduct and acts which amount to a waiver; but, if there is no waiver on the part of the company, proof of injury or death must be made as required by the policy.

Accident Insurance Agents.

Section 255pp.—PRINCIPLES OF AGENCY.—The principles of agency stated under the head of "Fire Insurance Agents" apply equally to agents of accident insurance companies. They bind their principals in the same way; their representations as to the business entrusted to them have the same effect; they may waive conditions of the contract to the same extent; and as there is no special rule applying particularly to accident insurance agents, it will be sufficient, as to them, to refer to the subject of "Fire Insurance Agents."

Marine Insurance.

Section 255qq.—THE POLICY.—Marine insurance, though upon property and against risks unknown on land, is to be construed by the same principles which apply to other insurance policies. In the construction of a marine policy, as in the construction of other policies, the intention of the contracting parties is the first thing to be determined. The courts will enforce the contract as the parties intended it to be, provided this can be done without violation of law and in accordance with a reasonable construction of the

policy. Premiums must be paid, and other conditions observed, as faithfully in marine as in other forms of insurance. Conditions may be waived also, in like manner as in other insurance, by express consent, or by conduct and circumstances from which a waiver is inferred.

Section 255rr.—DEFINITION OF MARINE INSURANCE.—Marine insurance is an insurance against risks connected with navigation, to which a ship, cargo, freightage, profits, or other insurable interests in movable property, may be exposed during a certain voyage or a fixed period of time.

Civil Code, Section 2655.

Section 255ss.—INSURABLE INTEREST.—The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss.

The insurable interest of an owner who has hypothecated the ship as security for a loan, to be repaid only in case the ship survives a particular risk, voyage, or period, is only the excess of the value of the ship over the amount secured as a loan.

Freightage, in the sense of a policy of marine insurance, means all the benefits derived by the owner either from the chartering of the ship or its employment for the carriage of his own goods or those of others.

The owner of a ship has an insurable interest in expected freightage, which he would have certainly earned had it not been for the happening of a peril insured against. This interest in expected freightage exists, in the case of a charter-party, when the ship has broken ground on the charter voyage; or if a price is to be paid for the carriage of goods, when they are actually on board, or there is some contract for putting them on board and both ship and goods are ready for the specified voyage.

One who has an interest in the things from which profits are expected, has an insurable interest in the profits.

The charterer of a ship has an insurable interest in it to the extent that he is liable to be damaged by its loss.

Civil Code, Sections 2659, 2660, 2661, 2662, 2663, 2664, 2665, 3017.

Section 255tt.—PERILS OF THE SEA.—The definition of perils of the sea, covered by marine insurance, is very extensive. Perils of the sea are all perils, losses, and misfortunes of a marine character, or of a character incident to a ship as such. They include storms and waves; rocks, shoals, and rapids; and other obstacles, though of human origin, such as floating logs, abandoned vessels, or other derelicts of the sea. They also include changes in climate; the confinement necessary at sea; animals peculiar to the sea; and all other dangers met with only upon the sea. An injury resulting from a defective condition of the ship itself, or negligent operation of the machinery, is not a peril of the sea. Thus, it has been held that the bursting of a steam boiler is not a peril of the sea, as understood in the law of marine insurance. A peril of the sea is one associated with the peculiar character and nature of the ocean, suggesting its winds and storms and tides, its tempestuous waves, its obscuring fogs, and other dangers inevitably incident to its navigation.

Section 255uu.—DUTY OF PARTIES.—In effecting a contract of marine insurance, it is the duty of the parties, the insurer and the insured, to reveal to each other all information materially affecting the risk; unless the same facts are known to both, or which in the exercise of ordinary care either party has the means of ascertaining. Neither party can withhold from the other any information peculiarly within his own knowledge, material to the risk, and he is required to state the exact and whole truth in relation to all matters about which he makes representations, voluntarily, or in answer to inquiries made of him.

(a)—**Presumption of Knowledge of Loss.**—A person insured by a contract of marine insurance is presumed to have had knowledge, at the time of insuring, of a prior loss of the thing insured; provided, it must appear that the information might possibly have reached him in the usual mode of transmission and in the usual time.

(b)—**Concealments Which Only Affect the Risk in Question.**—If a party applying for a policy of marine insurance conceals facts, in respect to any of the following matters, such concealment does not make the entire contract void, but does release the insurance company from a loss resulting from the risk concealed: (1) The national character of the insured; (2) The liability of the insured property to capture and detention; (3) The liability to seizure from breach of foreign laws of trade; (4) The want of necessary documents; and (5) The use of false and simulated papers.

(c)—**Effect of Intentional False Representations.**—If the party applying for a policy intentionally makes false representations about any matter respecting the risk, whether material or immaterial, the insurance company may rescind the entire contract.

Civil Code, Sections 2563, 2564, 2669, 2671, 2672, 2676.

Section 255vv. — WARRANTY OF SEAWORTHINESS.—In every marine insurance upon a ship, or freight, or freightage, or upon anything which is the subject of marine insurance, a warranty is implied that the ship is seaworthy.

(a)—**Seaworthiness Defined.**—A ship is seaworthy when reasonably fit to perform the services and to encounter the ordinary perils of the voyage contemplated by the parties to the policy. A warranty of seaworthiness extends not only to the condition of the structure of the ship itself, but requires that it be properly laden, and provided with a competent

master, a sufficient number of competent officers and seamen, and the requisite appurtenances and equipments, such as ballast, cables, anchors, cordage, sails, food, water, fuel, lights, and other necessary or proper stores and implements for the voyage.

(b)—**Different Degrees of Seaworthiness at Different Stages of the Voyage.**—Where different portions of the voyage contemplated by a policy differ, in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with if, at the commencement of each part of the voyage, the ship is seaworthy with reference to that portion.

(c)—**Delay in Making Repairs.**—When a ship becomes unseaworthy during the voyage, an unreasonable delay in making repairs will exonerate the insurance company from liability.

(d)—**Seaworthiness for Cargo.**—A ship which is seaworthy for the purpose of an insurance upon the ship may nevertheless, by reason of being unfitted to receive cargo, be unseaworthy for the purpose of insurance upon the cargo. To be seaworthy for cargo, the vessel must be properly equipped, with competent master and officers and men, and all necessary and proper stores and implements for the voyage.

(e)—**Neutral Papers.**—Where the nationality or neutrality of a ship or cargo is expressly warranted, it is implied that the ship will carry the requisite documents to show such nationality or neutrality, and that it will not carry any documents which cast reasonable suspicion thereon.

(f)—**At What Time Seaworthiness Must Exist.**—An implied warranty of seaworthiness is complied with if the ship be seaworthy at the time of the commencement of the risk, except in the following cases: When the insurance is made for a specified length of time, the implied warranty is not complied with unless the ship be seaworthy at the

commencement of every voyage she may undertake during that time; and, when the insurance is upon the cargo, which, by the terms of the policy, or the description of the voyage, or the established custom of the trade, is to be transshipped at an intermediate point, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transshipped be seaworthy at the commencement of its particular voyage.

Civil Code, Sections 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688.

Section 255ww.—DEVIATION FROM VOYAGE.—

In order to hold the insurance company liable in the event of a loss, it must appear that no material deviation from the voyage named in the policy was made. Where, for instance, a cargo of wheat was insured from San Francisco to Hong Kong, the transshipment of the wheat at Yokohama was a deviation, even though the bill of lading authorized it, because the insurance had not been effected with reference to that port.

(a)—**What Constitutes Deviation.**—Deviation is defined by the law to be a departure from the course of the voyage insured, or an unreasonable delay in pursuing the voyage, or the commencement of an entirely different voyage. When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course of sailing fixed by mercantile usage between those places. If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified which, to a master of ordinary skill and discretion, would seem the most natural, direct, and advantageous.

(b)—**Deviation Exonerates the Insured.**—An insurer is not liable for any loss happening subsequently to an improper deviation. But a deviation from the voyage contemplated by the policy is sometimes proper, and when properly made will not exonerate the insurer. A deviation

may be properly made, when caused by circumstances over which neither the master nor the owner of the ship had any control; or, when necessary to comply with a warranty, or to avoid a peril of the sea, whether insured against or not; or, when made in good faith and upon reasonable grounds of belief in its necessity to avoid a peril to ship or cargo; or, when made in good faith for the purpose of saving human life or relieving another vessel in distress. Every deviation not specified above as being proper is pronounced by the law to be improper, and when improperly made will release the insurer from liability.

Civil Code, Sections 2692, 2693, 2694, 2695, 2696, 2697.

Section 255xx.—TOTAL AND PARTIAL LOSS.—A loss may be either total or partial. Every loss which is not total is partial. A total loss may be either actual or constructive.

(a)—**Actual Total Loss.**—An actual total loss is caused by a total destruction of the thing insured; or a loss by sinking, or by being broken up; or any damage to the insured property which renders it valueless to the owner for the purposes for which he held it; or any other event which entirely deprives the owner of the possession, at the port of destination, of the property insured. An actual loss may be presumed from the continued absence of the ship without being heard of; and the length of time which is sufficient to raise the presumption depends on the circumstances of each case.

Upon an actual total loss, a person insured is entitled to payment without notice of abandonment.

(b)—**Constructive Total Loss.**—A constructive total loss is one which gives to a person insured a right to abandon the property by declaring to the insurer that he relinquishes to him his interest in the thing insured.

(c) — **Insurance Against Total Loss.** — An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession at the port of destination of the entire thing insured.

(d) — **Liability of Insurer When Voyage is Broken Up.** — When a ship is prevented, at an intermediate port, from completing the voyage by the perils insured against, the master must make every exertion to procure, in the same or a contiguous port, another ship, for the purpose of conveying the cargo to its destination; and when he has done so, the liability of a marine insurer of the cargo continues after it is thus reshipped. And in addition, a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage, and all other expenses incurred in saving the cargo reshipped, up to the amount insured.

Civil Code, Sections 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2708, 2709, 2712.

Section 255yy.—ABANDONMENT.—A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion separately valued by the policy or otherwise separately insured, and recover for a total loss thereof, when the cause of the loss is a peril insured against, in any of the following cases: (1) If more than half in value is actually lost, or would have to be expended to recover it from the peril; (2) If the property is injured to such an extent as to reduce its value more than one-half; (3) If a ship is insured, and the contemplated voyage cannot be performed without incurring an expense to the insured of more than half the value of the ship, or without incurring a risk which a prudent man would not take under the circumstances; (4) If the cargo or freightage is insured, and the voyage cannot be performed nor another ship procured by the master, within a reasonable time and with reasonable diligence, to forward the cargo, without

incurring an expense of more than half the value, or without incurring a risk which a prudent man would not take under the circumstances.

Freightage cannot in any case be abandoned unless the ship is also abandoned.

An abandonment must be neither partial nor conditional. An abandonment, to give the insured the right to claim the full amount of insurance, must include not only an intention to abandon, but also a relinquishment to all right to the property. The insured must in fact and in good faith abandon the ship; and he cannot still claim ownership, or continue in the use of the vessel, after he has given notice of abandonment as for a total loss.

An abandonment must be made within a reasonable time after information of the loss, after the commencement of the voyage. Where the information upon which an abandonment has been made proved incorrect, or the property insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual.

An abandonment is equivalent to a transfer by the insured of his interest to the insurer, with all the chances of recovery and indemnity. An acceptance of an abandonment is not necessary to the rights of the insured. But the acceptance of an abandonment, whether express or implied, is conclusive upon the parties, and admits the loss and the sufficiency of the abandonment.

An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded; as, where information of the loss of a ship turns out to be incorrect.

On an accepted abandonment of a ship, freightage earned previous to the loss belongs to the insurer of the freightage; but freightage subsequently earned belongs to the insurer of the ship.

(a)—**Refusal to Accept.**—If an insurance company refuses to accept a valid abandonment, it is liable as upon an actual total loss, deducting from the amount any proceeds

of the thing insured which may have come to the hands of the insured person.

(b)—**Waiver of Formal Abandonment.**—If a marine insurance company pays for a loss as if it were an actual total loss, it is entitled to whatever may remain of the property insured, or its proceeds or salvage, as if there had been a formal abandonment.

(c)—**Omission to Abandon.**—If a person insured omits to abandon, he may nevertheless recover his actual loss. .

(d)—**Notice of Abandonment.**—Abandonment is made by giving notice thereof to the insurer, which may be made orally or in writing. A notice of abandonment must be explicit, and must specify the particular cause of the abandonment; but it is only necessary to state enough to show that there is probable cause to abandon, and the notice need not be accompanied with proof of interest or of loss.

Civil Code, Sections 2716, 2717, 2718, 2719, 2720, 2721, 2722, 2724, 2725, 2727, 2728, 2729, 2730, 2731, 2732.

Section 255zz.—MEASURE OF INDEMNITY.—A valuation in a policy of marine insurance is conclusive between the parties thereto, in the adjustment of either a partial or total loss, if the insured has some interest at risk, and there is no fraud on his part; except that when a thing has been hypothecated, before its insurance, and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract.

(a)—**Partial Loss.**—A marine insurer is liable upon a partial loss, only for such proportion of the amount insured by him as the property lost bears to the value of the whole interest of the insured.

(b)—**Profits.**—Where profits are separately insured the insured is entitled to recover, in case of loss, a proportion

of such profits, equivalent to the proportion which the value of the property lost bears to the value of the whole.

(c)—**Valuation Apportioned.**—In case of a valued policy on freightage or cargo, if a part only of the subject is exposed to risk, the valuation applies only in proportion to such part.

(d)—**Valuation Applied to Profits.**—When profits are valued and insured in the policy, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise, and the valuation in the policy fixes their amount.

(e)—**Estimating Loss Under an Open Policy.**—In estimating a loss under an open policy, where the values are not fixed by the contract, the following rules are to be observed: (1) The value of a ship is its value at the beginning of the risk, including all articles or charges which add to its permanent value, or which are necessary to prepare it for the voyage insured; (2) The value of cargo is its actual cost to the insured, when laden on board, or when that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board; but this must be without reference to any losses incurred in raising money for its purchase, or any drawback on its exportation, or any fluctuations of the market at the port of destination, or any expenses incurred on the way or on arrival; (3) The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and (4) The cost of insurance is in each case to be added to the value thus estimated.

(f)—**Arrival of Cargo Damaged.**—If cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value which the market price at that port, of the goods damaged, bears to the market price they would have brought if sound.

(g)—**Labor and Expenses.**—A marine insurer is liable for all the expense attendant upon a loss which forces the ship into port to be repaired; and where it is agreed that the insured may perform labor for the recovery of the property, the insurer is liable for the expense incurred thereby; such expense in either case being in addition to a total loss, if that afterwards occurs.

(h)—**One-third New for Old.**—In case of a partial loss of a ship or its equipments, the old materials are to be applied towards payment for the new, when repairs are made; and whether the ship is new or old, a marine insurer is liable for only two-thirds of the remaining costs of the repairs, except that he must pay for anchors and cannon in full, and for sheathing metal at a depreciation of only two and one-half per cent for each month that it has been fastened to the ship.

Civil Code, Sections 2736, 2737, 2738, 2739, 2740, 2741, 2742, 2743, 2746.

Section 255aaa.—GENERAL AVERAGE.—A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard or otherwise sacrifice, any or all the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison, and the loss incurred thereby is called a general average loss.

A jettison must begin with the most bulky and least valuable articles, so far as possible.

A jettison can be made only by authority of the master of the ship, except in case of his disability or an overruling necessity, when it may be made by any other person.

The loss incurred by a jettison, when lawfully made, must be borne in due proportions by all that part of the ship, appurtenances, freightage, and cargo, for the benefit of which the sacrifice is made, as well as by the owner of the property sacrificed. The proportions in which a general average loss is to be borne must be ascertained by an

adjustment, in which the owner of each separate interest is to be charged with such proportion of the value of the thing lost as the value of his part of the property affected bears to the value of the whole. An adjustment made at the end of the voyage, if valid there, is valid everywhere.

In estimating values for the purpose of a general average, the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery, and the cargo as at the time and place of its discharge; adding, in each case, the amount made good by contribution.

The owner of things stowed on deck, in case of their jettison, is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such voyage.

Where a person insured by a contract of marine insurance has a demand against others for a contribution, by reason of a general average, he may claim the whole loss from the insurance company, subrogating it to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right.

Civil Code, Sections 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2745.

Section 255bbb.—PERISHABLE GOODS.—What is known as the memorandum clause in policies of marine insurance, whereby the insurance company is exempted from liability for any partial loss of goods of a perishable nature, is intended to apply only where goods are perishable and there is difficulty in proving whether the loss occurred from the inherent quality of the goods or from a peril of the sea.

Section 255ccc.—ACTS OF MASTER AND CREW.
—The insurance company will be liable notwithstanding a

lack of skill, or even negligence, on the part of the master or crew. To relieve the company from liability because of acts of the master or crew, there must be want of good faith and honesty of purpose on their part. If a ship should be run on shore by the crew and wrecked, through being placed in a dangerous position by reason of negligence or unskilfulness of the crew, this does not exempt the company from liability, where it appears that the crew were not acting in bad faith and with dishonest purpose to cause loss.

Marine Insurance Agents.

Section 255ddd.—PRINCIPLES OF AGENCY.—The principles of agency stated under the head of "Fire Insurance Agents" apply equally to agents of marine insurance companies. They bind their principals in the same way; their representations as to the business entrusted to them have the same effect; they may waive conditions of the contract to the same extent; and as there is no special rule applying particularly to marine insurance agents, it will be sufficient, as to them, to refer to the subject of "Fire Insurance Agents."

Building Contracts.

Section 256.—THE CONTRACT.—The law was amended in 1911, so that now a building contract may be either oral or in writing, if the work is to be performed within a year. But as the lien law requires the recording of the original contract, in order to give actual notice of its terms to all persons who perform work upon or furnish materials for the structure, it may be said that a contract in writing is still essential.

Code of Civil Procedure, Section 1183; as amended
by Act of the Legislature, approved May 1, 1911.

Section 257.—RECORDING OF CONTRACT.—The contract must be recorded, if recorded at all, in the office of the County Recorder of the county where the property is situated, before the commencement of the work.

Code of Civil Procedure, Section 1183; as amended by Act of the Legislature, approved May 1, 1911.

Section 258.—MATERIALS FURNISHED CONTRACTOR EXEMPT FROM EXECUTION.—Materials furnished for use and about to be used in the construction, alteration, or repair of any building cannot be taken under attachment or execution, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase price of the materials.

Code of Civil Procedure, Section 1196.

Section 259.—FORM OF BUILDER'S CONTRACT.—The following is a form of builder's contract, which is in common use in this state, and which meets the requirements of the law in its terms:—

ARTICLES OF AGREEMENT, Made this.....day of
....., 191..., Between.....
.....
of the....., County of....., State of Cali-
fornia, the party of the first part, and.....
.....
of the....., County of....., State
of California, the party of the second part.

Witnesseth:—The the party of the first part will be herein-
after designated as the Owner, and the party of the second
part as the Contractor, singular number only being used;
and the word Architect used herein in the singular shall
include the plural, and the masculine the feminine.

FIRST.—The Contractor agrees, within the space of
.....working days from and after the date
hereof, to furnish the necessary labor and materials, includ-
ing tools, implements, and appliances required, and perform
and complete in a workmanlike manner all the
.....
.....

(Here insert description of work to be done, under the contract, whether woodwork, plastering, plumbing, iron-work, etc.)

.....
and other works shown and described in and by, and in conformity with, the plans, drawings, and specifications for the same made by....., the authorized Architect employed by the Owner, and which are signed by the parties hereto.

SECOND.—Said Architect shall provide and furnish to the Contractor all details and working drawings necessary to properly delineate said plans and specifications; and the work is to be done and the materials furnished in accordance therewith under the direction and supervision and subject to the approval of said Architect, or a Superintendent selected and agreed upon by the parties hereto, within a fair and equitable construction of the true intent and meaning of said plans and specifications.

THIRD.—The time during which the Contractor is delayed in said work by acts or neglects of the Owner or his employees, or those under him by contract or otherwise, or by the acts of God which the Contractor could not have reasonably foreseen and provided for, or by stormy and inclement weather which delays the work, or by any strikes, boycotts, or like obstructive action by employee or labor organizations, or by lock-outs or other defensive action by employers, whether general, or individual, or by organizations of employers, shall be added to the aforesaid time for completion.

FOURTH.—Said building
.....
to be erected upon a lot of land situated in.....
....., County of.....
State of California, and described as follows:

.....
(Here insert description of the lot of land.)
.....
.....

FIFTH.—The Owner agrees, in consideration of the performance of this agreement by the Contractor, to pay, or cause to be paid to the Contractor, his legal representative or assigns, the sum of.....

(Here insert contract price.)

..... Dollars, in United States Gold Coin, at the times and in the manner following, to-wit:Dollars when the foundation is completed and the framing materials on the ground and the frame up;Dollars when the roof and rustic are on;Dollars when the plastering is completed; and..... Dollars thirty-five days after the completion of the building and acceptance by the Owner;

(Here insert any other condition as to payment desired.)

..... Provided, that when each payment or installment shall become due, and in the final completion of the work, certificates in writing shall be obtained from the said Architect, stating that the payment or installment is due or work completed, as the case may be, and the amount then due; and the said Architect shall at said times deliver said certificates under his hand to the Contractor, or, in lieu of such certificates shall deliver to the contractor in writing under his hand, a just and true reason for not issuing the certificates, including a statement of the defects, if any, to be remedied, to entitle the Contractor to the certificate or certificates. And in the event of the failure of the Architect to furnish and deliver said certificates, or any of them, or in lieu thereof the writing aforesaid, within three days after the times aforesaid, and after demand therefor made in writing by the Contractor, the amount which may be claimed to be due by the Contractor, and stated in the said demand made by him for the certificate, shall, at the expiration of said three days, become due and payable, and the Owner shall be liable and bound to pay the same on demand.

In case the Architect delivers the writing aforesaid in lieu of the certificate, then a compliance by the Contractor with the requirements of said writing shall entitle the Contractor to the certificate.

SIXTH.—For any delay on the part of the Owner in making any of the payments or installments provided for in this contract after they shall become due and payable, he shall be liable to the Contractor for any and all damages which the latter may suffer; and such delay shall, in addition, operate as an additional extension of the time for completion aforesaid for the length of time of such delay. And

such delay, if for more than five days after the date when said payments or installments shall have respectively become due and payable, as in this agreement provided, shall, at the option of the Contractor, be held to be prevention by the Owner of performance of this contract by the Contractor.

SEVENTH.—The specifications and drawings are intended to co-operate, so that any work exhibited in the drawings and not mentioned in the specifications, or vice versa, are to be executed the same as if both mentioned in the specifications and set forth in the drawings, to the true intent and meaning of the said drawings and specifications when taken together. But no part of said specifications that is in conflict with any portion of this agreement, or that is not actually descriptive of the work to be done thereunder, or of the manner in which the said work is to be executed, shall be considered as any part of this agreement, but shall be utterly null and void.

EIGHTH.—Should the Owner or the Architect at any time during the progress of the work, request any alterations or deviations in, additions to, or omissions from, this contract, or the plans or specifications, either of them shall be at liberty to do so, and the same shall in no way affect or make void this contract; but the amount thereof shall be added to, or deducted from, the amount of the contract price aforesaid, as the case may be, by a fair and reasonable valuation. And this contract shall be held to be completed when the work is finished in accordance with the original plans, as amended by such changes, whatever may be the nature or extent thereof.

NINTH.—The rule of practice to be observed in the fulfilment of the last foregoing paragraph (eighth) shall be that, upon the demand of either the Contractor, Owner, or Architect, the character and valuation of any or all changes, omissions, or extra work, shall be agreed upon and fixed in writing, signed by the Owner, Architect, and the Contractor, prior to execution.

TENTH.—Should any dispute arise between the Owner and Contractor, or between the Contractor and Architect, respecting the true construction of the drawings and specifications, the same shall, in the first instance, be decided by the Architect; but should either of the parties hereto be dissatisfied with the justice of such decision, or should any

dispute arise between the parties hereto respecting the valuation of the extra work, work done, or work omitted, the disputed matter shall be referred to, and decided by, two competent persons who are experts in the business of building—one to be selected by the Owner or Architect, and the other by the Contractor; and, in case they cannot agree, these two shall select an umpire, and the decision of any two of them shall be binding on all parties.

ELEVENTH.—Should the Contractor fail to complete this contract, and the works provided for therein, within the time fixed for such completion, due allowance being made for the contingencies provided for herein, he shall become liable to the owner for all loss and damages which the latter may suffer on account thereof, but not to exceed the sum of \$. per day for each day said work shall remain uncompleted beyond such time for completion.

TWELFTH.—In case said work herein provided for should, before completion, be wholly destroyed by fire, defective soil, earthquake, or other act of God which the Contractor could not have reasonably foreseen and provided for, then the loss occasioned thereby shall be sustained by the Owner to the extent that he has paid installments thereon, or that may be due under the fifth clause of this contract; and the loss occasioned thereby, and to be sustained by the Contractor, shall be for the uncompleted portion of said work upon which he may be engaged at the time of the loss, and for which no payment is yet due under said fifth clause of this contract.

In the event of a partial destruction of said work by any of the causes above named, then the loss to be sustained by the Owner shall be in the proportion that the amounts of installments paid or due bears to the total amount of work done and materials furnished, estimated according to said contract price, and the balance of said loss to be sustained by the Contractor.

THIRTEENTH.—The payment of the progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments; but the entire work is to be subjected to inspection and approval of the Architect or Superintendent at the time when it shall be claimed by the Contractor that the contract and works are completed; but the Architect or Superintendent shall exercise all reasonable diligence in the discovery, and report to the Contractor, as the work progresses, of materials and

labor which are not satisfactory to the Architect or Superintendent, so as to avoid unnecessary trouble and cost to the Contractor in making good defective parts.

FOURTEENTH.—Should the Contractor, at any time during the progress of the work, refuse or neglect, without the fault of the Owner, Architect, or Superintendent, to supply a sufficiency of materials or workmen to complete the contract within the time limited herein, or any lawful extension thereof, for a period of more than three days after having been notified by the Owner in writing to furnish the same, the Owner shall have power to furnish and provide said materials or workmen to finish the said work; and the reasonable expenses thereof shall be deducted from the amount of the contract price.

IN WITNESS WHEREOF, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

..... (Seal.)
 (Seal.)

Section 260.—REFERENCE TO PLANS AND SPECIFICATIONS IN CONTRACT.—Where a building contract provides that the contractor shall do the work according to certain drawings and specifications, which are referred to in the contract as “hereto annexed,” the drawings and specifications are an essential part of the contract, and until they are annexed the contract is not complete; and it is essential that the drawings and specifications referred to in the contract should be filed in the Recorder’s office, together with the contract, and a failure to file them destroys the validity of the contract.

Section 261.—FAILURE TO FILE CONTRACT.—The failure to file the contract for record will not make the contract void. The filing of the contract for record gives actual notice of its terms to all, and limits lien claims to the labor or materials embraced within the terms of the original contract; but the contract will be valid, though not recorded at all.

Code of Civil Procedure, Section 1183; as amended by Act of the Legislature, approved May 1, 1911.

Section 262.—CONTRACT OF MINOR.—A minor is not bound by his contract for the erection or repair of a building. A minor is only bound by his contracts in certain cases, which form exceptions to the general rule that minors cannot make contracts, in which the erection of a building is not included.

Section 263.—PRICE WHERE CONTRACTOR ABANDONS THE WORK.—If the contract for the erection and completion of a building is entire, and the contractor abandons the work before it is completed, he loses the right which he would have had to the full compensation agreed on.

Section 264.—OWNER PREVENTING WORK.—Where a contractor has proceeded to construct a building of the material and in the manner substantially as provided for in the contract, and the owner before completion of the contract, and without cause, and in violation of the contract, refuses to allow the contractor to go on, and takes possession of the building, and appropriates to his own use the materials on hand for the construction of the building, the contractor is entitled to treat the contract as rescinded. And in other circumstances, where acts of similar character by the owner prevent the contractor from completing the work as agreed upon, the contractor may look upon the contract as rescinded. In all such cases, the contractor may recover from the owner the reasonable value of the work performed and material furnished by him.

Section 265.—ACCEPTANCE BY AGENT.—Where the parties to a building contract agree upon an agent, who is authorized to accept or reject the work when completed, his acceptance is binding upon both parties; and where the agent acts in good faith, and without practicing any fraud upon either party to the contract, his acceptance of the work is final and conclusive.

Section 266.—BREACH OF CONTRACT BY OWNER.—Where a contractor agrees to perform certain work and furnish certain materials for the construction of a building, and after furnishing a portion of the materials the owner of the building stops the work, and fails to receive any further material from the contractor, the owner is liable to the contractor in damages. The contractor may recover from the owner as damages all the profits he would have made if the work had gone on and the materials had been received from him.

Section 267.—AGREEMENT AS TO EXTRA WORK.—Where a building contract provides that “no extra work is to be paid for except by contract in writing,” the parties may verbally rescind this provision, at any time, and agree to alterations. Where alterations are made by agreement, written or verbal, the original contract is not set aside, but is only modified to the extent of the change in the plans.

Section 268.—LOSS BY FIRE BEFORE COMPLETION.—Where, by the terms of a building contract, the third and last installments of payment for the work are conditioned upon its completion according to agreement and specifications, such installments cannot be recovered where the whole work is consumed by fire, without apparent fault of either party, before its completion. A question will arise under such circumstances as to whether the building was substantially completed at the time of the fire. In a suit between a contractor and owner, at San Francisco, the Supreme Court of California decided that where it was proved that no part of the second coat of paint required by the contract had been put on; that the work bench of the carpenters and the paint for the second coat were in the building at the time of the fire; that two of the doors were unhung, and no fastenings put on the front door or windows; and that the house had not been delivered or accepted; the building was not substantially completed before the fire. (Decided by the Supreme Court of California in the case

of *Clark vs. Collier*, which decision is printed in Volume 100 of the California Reports, page 256.) So many things were lacking in the case quoted, that it would have been surprising indeed if the Supreme Court had decided that the work was substantially performed; and in all cases the question, whether a contract has been substantially performed before a fire, will depend upon the terms of the contract and a reasonable consideration of the work done and remaining to be done.

Section 269.—CONTRACT PROVIDING FOR ARBITRATION.—Where a building contract provides for the arbitration of any matter, the contractor must first demand an arbitration before he can sue for his pay for the work included in the provision for arbitration. For instance, the contractor is not entitled to recover for extra work, or for materials furnished, when the contract provides that claims for such extras must be submitted to arbitration, and the contractor has made no offer or request to arbitrate. The contractor must offer in good faith to arbitrate, and if the owner refuses, he may then sue for and recover the value of the extra work, regardless of the arbitration clause.

Section 270.—SUBSTANTIAL PERFORMANCE.—In certain cases, the contractor, although he has not completed the work literally as called for by the contract, yet may recover from the owner the contract price, less damages suffered by the owner from the contractor's failure to do the work as contracted for. But the contractor must show in such cases that the failure was not by his own fault; that he endeavored and intended in good faith to do the work exactly as contracted for; and he must also be able to show that the work has been in every material particular performed substantially in the manner called for by the contract. The contractor must have intended in good faith to comply with the terms of the contract. The spirit of the contract must be faithfully observed, though the very letter of it fail. Good faith alone, however, is not enough. The owner has a right to a structure in all essential particulars such as he has

contracted for, and to authorize a court or jury to find that there has been a substantial performance, it must be found that he has such a structure. The court cannot say that anything is immaterial, which the parties have made material by their own agreement. The owner has a right to have the structure he contracted for, and not another; and even his caprices, if expressed in the contract, must be complied with, even though they do not add to the value of the building, or may have lessened its value. It is only where the plan has been substantially embodied in the work that the contractor will have a remedy for substantial performance. The omissions or deviations from the plans must be the result of a mistake or inadvertance, and not intentional, much less fraudulent; and they must be slight or susceptible of remedy, so that an allowance out of the contract price will give the owner substantially what he contracted for. Some of the things which will not be considered as substantial performance of a building contract are mentioned in the suit brought at San Francisco by Edward H. Perry against Thomas M. Quackenbush, and decided by the Supreme Court of California. The contractor agreed in the construction of the foundation to use good, hard brick and lay seven courses, and to construct twelve piers of brick laid in six courses. In violation of the agreement, he used old, second-hand brick of poor quality, that had been used in other buildings, and laid the same in courses of five and six instead of seven, and constructed only six piers of brick of the same kind laid in three courses. He agreed to use in the construction of the frame of said building the best kind of lumber; contrary to his agreement, he used only second-class lumber and second-hand and refuse lumber that had been used in other buildings. He agreed to use in the construction of the roof the best quality of shingles; contrary to his agreement, he used second-hand lumber and second-class shingles. He agreed to paint the building with two coats of metallic paint, but used no metallic paint at all, but cheap and inferior paint. The Supreme Court held that these facts showed that the contractor had in no sense substantially performed his

agreement, but that he had intentionally and wilfully departed from it. (Decided by the Supreme Court of California in the case of Edward H. Perry vs. Thomas M. Quackenbush, which decision is printed in Volume 105 of the California Reports, page 299.)

Section 271.—RIGHT OF CONTRACTOR TO ABANDON WORK.—If the owner prevents the progress of the work, or fails to furnish materials with which the work can be done, where the owner is to furnish the materials, or fails to pay an installment of the price when it becomes due, the contractor has the right to abandon the work and sue the owner for the reasonable value of his work and materials. The contractor has no right to leave the work without cause; and if, when he makes a demand for an installment of the price, he has not performed the contract according to its terms, the installment is not legally due, and he will not be justified in leaving the work on the ground of non-payment.

Section 272.—MATERIAL DEPARTURE FROM SPECIFICATIONS.—A building contractor must stick close to the plans and specifications, and must make no changes or deviations without the consent of the owner. Any material departure from the plans and specifications by the contractor will render him liable to the owner in damages, and may give the owner the right to rescind the contract altogether. Where a building contract called for laths one and one-quarter inches wide, and laths one and one-half inches wide were used, and the contract called for No. 1 rustic and the best quality of joists and studding, and the contractor used second quality of joists and studding and No. 2 rustic, it has been decided by our Supreme Court that there was a substantial and material departure from the specifications of the contract.

Section 273.—EXCAVATIONS.—The question whether the owner of land will be liable in damages, for injury to

adjoining property, caused by excavating, will depend in every case upon the manner of making the excavation. The owner of a lot in making excavations must use due care. If one by carelessness in making excavations on his own land causes injury to an adjoining building, even where the owner of the house has no easement of support, he will be liable for damages. The law exacts from a person who undertakes even a lawful act on his own premises from which injury might be apprehended to the property of his neighbor, the exercise of a degree of care measured by the danger, to prevent or lessen the injury. The general rule is, that no one has absolute freedom in the use of his property, but is restrained by the co-existence of equal rights of his neighbor to the use of his property, so that each in exercising his right must do no act which causes injury to his neighbor. But if the owner of the land, in making excavations, performs the work in a proper and careful manner, he will not be liable for injury to the premises of an adjoining owner. He is required only to take reasonable precaution to sustain the land of the adjoining owner. The adjoining owner must also take precaution to sustain his own walls, after notice of the intended excavations. The party intending to make excavations must give notice to the adjoining owner. This notice may be verbal or written. The notice is not required to be in any particular form. In one case decided by the Supreme Court of California, it was held that the following notice was entirely sufficient: "Dear Madam: As we are about to excavate the premises on the southeast corner of Haight and Devisadero Streets, directly adjoining your lot, to a depth somewhat below your foundation, you are hereby notified to take the necessary measures to protect your property. Very respectfully, Cunningham Bros., Architects. For Christian Warneke." - (Decided by the Supreme Court of California, in the case of Nippert vs. Warneke, which decision is reported in Volume 128 of the California Reports, page 501.)

Civil Code, Section 832.

Section 274.—UNSAFE SCAFFOLDING, LADDERS, ETC.—Any person or corporation employing or directing another to do or perform any labor in the construction, alteration, repairing, painting or cleaning of any house, building or structure within this state, who knowingly or negligently furnishes or erects or causes to be furnished or erected for performance of labor, unsafe or improper scaffolding, slings, hangers, blocks, pulleys, stays, braces, ladders, irons, ropes or other mechanical contrivances; or who hinders or obstructs any officer attempting to inspect the same; or who destroys, defaces, or removes any notice posted thereon by such officer; or who permits the use thereof, after the same has been declared unsafe by such officer, is guilty of a misdemeanor.

Act of the Legislature, approved March 13, 1909.

Section 275.—TEMPORARY FLOORING FOR PROTECTION OF WORKMEN.—Any building more than two stories high in the course of construction shall have the joists, beams or girders of each and every floor below the floor or level where any work is being done, or about to be done, covered with flooring laid close together, or with such other suitable material to protect workmen engaged in such building from falling through joists or girders, and from falling planks, bricks, rivets, tools, or any other substance whereby life and limb are endangered.

Such flooring shall not be removed until the same is replaced by the permanent flooring in such building.

It shall be the duty of the general contractor having charge of the erection of such building to provide for the flooring as herein required, or to make such arrangements as may be necessary with sub-contractors in order that the provisions of this act may be carried out.

It shall be the duty of the owner or the agent of the owner of such building to see that the general contractor or sub-contractors carry out the provisions of this act.

Should the general contractor or sub-contractors of such building fail to provide for the flooring of such building, as herein provided, then it shall be the duty of the owner or the

agent of the owner of such building to see that the provisions of this act are carried out.

Failure upon the part of the owner, agent of the owner, general contractor, or sub-contractors to comply with the provisions of this act shall be deemed a misdemeanor and shall be punishable as such.

Act of the Legislature, approved April 26, 1911.

Section 276.—TENEMENT HOUSE LAW.—This act shall be known as the tenement house act, and its provisions shall apply to all incorporated towns, incorporated cities, cities and counties in the State of California.

1. Tenement House.—A tenement house is any house or building, or portion thereof, of more than one story, which is designed, built, rented, leased, let or hired out, to be occupied or is occupied as the home or residence of four families or more living independently of each other, and doing their cooking upon the premises, or by three families so living and cooking, and having a common right in the halls, stairways, yards, water-closets, or some or any of them.

Provided, that a building of not more than two stories in height, which is designed, built, rented, leased, let or hired out, to be occupied or is occupied as the home or residence of not more than four families living independently of each other, and so constructed that each section is arranged to be occupied as the home or residence of a separate family and each section having an entirely independent and separate entrance and stairway from the street or from an outside vestibule on the level of the first floor of said building, and with no room, hall, bathroom, water-closet, kitchen or other convenience used in common by two or more families occupying said building, shall not come within the definition of a tenement house contained in this act.

2. Apartments.—An “apartment” in a tenement house is a room or suite of rooms which is occupied, or is intended or designed to be occupied, as a family domicile.

3. **Yards.**—A “yard” is an open, unoccupied space on the same lot with a tenement house, between the extreme rear line of the house and the rear line of the lot.

4. **Courts.**—A “court” is an open, unoccupied space, other than a yard, on the same lot with a tenement house. A court not extending to the street or yard is an inner court. A court extending to the street or yard and bounded on three sides by a tenement house on the same lot is an outer court. If it extends to the street it is a street court. If it extends to the yard it is a yard court. If it extends from the street to the yard it is a street-to-yard court. A court bounded on one side and both ends by a tenement house and on the remaining side by a lot-line is a “lot-line” court.

A court bounded on one side and one end by a tenement house and on the remaining side by lot line and the remaining end open to the street or yard is a lot line outer court.

5. **Shafts.**—A “shaft” includes exterior and interior shafts, whether for air, light, elevator, dumbwaiter, or any other purpose. A vent shaft is one used solely to ventilate or light a water-closet compartment or bathroom.

6. **Public Halls.**—A “public hall” is a hall, corridor or passageway not within an apartment.

7. **Stair Halls.**—A “stair hall” includes the stairs, stair landings and those portions of the public hall through which it is necessary to pass in going between the entrance hall and the roof.

8. **Basements.**—A “basement” is a story partly below the level of the curb, the ceiling of which is not less than four feet six inches above the curb level.

9. **Cellars.**—A “cellar” is any story partly or wholly below the level of the curb, the ceiling of which is less than four feet six inches above the curb level.

10. **Fireproof Tenement House.**—A “fireproof tenement house” is one the walls of which are constructed of brick,

stone, iron or other incombustible material, and in which there are no wooden beams or lintels, and in which the floors, roofs, stair halls and public halls are built entirely of brick, stone, iron, or other hard incombustible material, and in which no woodwork or other inflammable material is used in any of the partitions, furrings or ceilings. But this definition shall not be construed as prohibiting elsewhere than in the stair halls or entrance halls, the use of wooden flooring on top of the fireproof floors or the use of wooden sleepers, nor as prohibiting wooden handrails, and hardwood treads.

11. Wooden Tenement.—A “wooden tenement” is a tenement of which the exterior walls or a portion thereof are of wood. Wooden buildings covered with metal, plaster, terra cotta, or veneered with masonry are wooden structures.

12. Length, Width and Height.—For the purpose of this act the greatest horizontal linear dimension of any building shall be its length, and the next greatest horizontal linear dimension its width.

The height of buildings shall be measured from the curb level at the center of the main front of the building to the top of the highest point of the roof beams in case of flat roofs, and for high-pitched roofs the average height of the gable shall be taken as the highest point of the building.

For a building erected upon a street corner, the measurements shall be taken from the curb level opposite the center of either front.

When the ground upon which the walls of a structure are built is above the street level, the average level for the ground adjoining the walls may be taken instead of the curb level for the height of such structure.

13. Building Not Erected for Tenement.—A building not erected for use as a tenement house, if hereafter altered or converted to such use, shall thereupon become subject to all of the provisions of this act affecting tenement houses hereafter erected.

14. Tenement Not to Be Altered.—No tenement house shall at any time be altered so as to be in violation of any

provision of this act. If any tenement house or any part thereof be erected, altered or occupied contrary to law, such tenement house shall be deemed an unlawful structure, and the board of health, or if there be no board of health, the department charged with the enforcement of this act, may cause such building to be vacated, and such building shall not again be occupied until it or its occupation, as the case may be, has been made to conform with the law.

15. Per Cent of Lot House May Occupy.—No tenement house hereafter erected shall occupy more than ninety per cent of a corner lot or more than seventy-five per cent of any other lot, except as otherwise provided in this act, provided that the space occupied by open iron fire escapes erected and constructed according to law shall not be deemed a part of the lot occupied, but that the space occupied by fireproof stairs, and by vent shafts thirty-two square feet or less in area, shall be considered as part of the lot occupied. For the purposes of this section the measurements may be taken at the level of the second tier of beams (the second floor level), except where rooms on the ground floor are to be used for sleeping apartments.

16. Corner Lot.—By corner lot is meant a lot situated at the junction of two streets, or of a street and public alley or other public thoroughfare or public park, not less than sixteen feet in width. Any portion of the width of such lot distant more than fifty feet from such junction shall not be regarded as part of a corner lot, but shall be subject to the provisions of this act respecting other than corner lots. Where, in any corner lot, the two frontages are of unequal length, either street frontage may be taken as the width of the lot. Street frontage alone and not alley frontage shall be considered in determining such lesser frontage.

17. Limit of Height.—The height of no tenement house hereafter erected shall by more than one-half exceed the width of the widest street upon which it stands.

18. Rear Yard.—Behind every tenement house hereafter erected, there shall be a yard extending across the entire width of the lot and at every point open from the ground to the sky, unobstructed, except that open iron fire escapes may project not over four feet from the rear line of the house. The depth of said yard, measured from the extreme rear wall of the house to the rear line of the lot, shall be as provided in the following sections.

19. Houses Sixty Feet High—Yard Not Less Than Twelve Feet Wide.—Except upon a corner lot, as provided herein, or upon a lot running through from street to street or street to public alley, or public park as provided herein, the depth of the yard behind every tenement house hereafter erected sixty feet in height shall not be less than 12 feet in every part. Said yard shall be increased in depth two feet for every additional twelve feet in height of the building or fraction thereof, and may be decreased in depth one foot for every twelve feet in height of the building less than sixty feet; but it shall never be less than ten feet in depth in every part.

20. Yard of Corner Lot Not Less Than Ten Feet Wide.—The depth of the yard behind every tenement house hereafter erected upon a corner lot shall be not less than ten feet in every part and at every point open and unobstructed from the level of the second tier of beams (the second floor level), provided that where any such lot is less than one hundred feet in depth the depth of the yard be not less than ten per centum of the greatest depth of such lot, but shall never be less than five feet in every part, nor less than the minimum width of an outer court on the lot line as prescribed by this act. If rooms on the ground floor are used as sleeping apartments the yard shall be taken from the ground up. When a corner lot is more than fifty feet in width, the yard for that portion in excess of fifty feet shall conform to the provisions of subdivision 16.

21. When One-half Width of Alley May Be Included in Yard.—Whenever a tenement house is hereafter erected upon a lot which runs through from one street to another street or public alley or public park and said lot is not more than one hundred and fifty feet in depth, one-half of the width of the narrowest street or alley may be included in the depth of the yard required by this act, provided that on such lot no tenement house hereafter erected shall occupy more than 90 per centum of a corner lot, or more than 75 per centum of any other lot.

One-half of the rear street or public alley or public park may be included in the portion of lot that is left uncovered in computing the percentage, provided said one-half does not exceed the depth of yard required herein, in which case only twelve feet may be included in computing the percentage to be left uncovered.

22. When Lot Is Surrounded by Streets.—If a lot is surrounded upon its four sides by streets or streets and public alleys 20 feet or more wide or public parks over 24 feet wide, the provisions relating to yards need not be complied with, provided that the tenement house to be constructed on such lot does not occupy more than 75 per centum of the lot and contains an outer court at least 80 feet deep and of a width twice as great as the depth prescribed for yards and open to one of the surrounding streets, alleys, or parks. Provided, that said outer court shall not be required to be of a depth which shall leave less than 50 feet between the rear line of said court and the line of said lot immediately behind said court.

No court of a tenement house hereafter erected shall be covered by a roof or skylight, but every such court shall be at every point open from the bottom of the lowest room used for human habitation and lighted by such court to the sky, unobstructed, except that open iron fire escapes, as required by law, or by ordinances or regulations of incorporated towns, incorporated cities or cities and counties, may project into the court, but not more than four feet from the

wall of the house. All courts in tenement houses hereafter erected shall conform to the requirements of the following sections.

Except that recesses may be built on the street or yard or a court, provided the depth of same is no greater than the width and that their area be not counted in computing the area of the court.

23. Minimum Widths and Maximum Lengths of Outer Courts.—The outer courts of all tenement houses hereafter erected shall have not less than the following minimum widths nor more than the following maximum lengths:

Building.	Least width	Maximum length.
2 stories.....	4 feet	16 feet.
3 stories.....	4 feet 6 inches....	25 feet.
4 stories.....	5 feet 6 inches....	30 feet.
5 stories.....	6 feet	35 feet.
6 stories.....	8 feet	35 feet.
7 stories.....	10 feet	40 feet.
8 stories.....	12 feet	40 feet.

The length of outer courts shall not be more than the maximum lengths given in the above table unless six inches be added to the minimum widths for each additional five feet or fraction thereof in length. The lot line outer courts shall have the same minimum width as outer courts, but are not governed by the provision in this section regarding maximum lengths.

24. Areas and Widths of Inner Courts.—The inner courts of all tenement houses hereafter erected shall have areas and minimum widths in all parts, not less than the widths and areas as follows:

Building.	Square feet.	Least width.
2 stories.....	75.....	6 feet.
3 stories.....	120.....	7 feet.
4 stories.....	160.....	8 feet.
5 stories.....	250.....	12 feet.
6 stories.....	400.....	16 feet.
7 stories.....	625.....	20 feet.
8 stories or more	840.....	24 feet.

25. Areas and Widths of Lot Line Courts.—Lot line courts in tenement houses hereafter erected shall have areas and minimum widths in all parts not less than those specified in the following table:

Building.	Square feet.	Least width.
2 stories.....	50.....	4 feet.
3 stories.....	60.....	5 feet.
4 stories.....	105.....	7 feet.
5 stories.....	180.....	9 feet.
6 stories.....	300.....	12 feet.
7 stories.....	490.....	14 feet.
8 stories.....	595.....	17 feet.

26. Air Intakes of Inner Courts.—Every inner court, including lot line courts, shall be provided with one or more horizontal air intakes at the bottom. Such intakes shall always communicate directly with the street or yard, and shall consist of an unobstructed passageway, not less than three feet wide and six feet six inches high, which shall be left open, or if not open, there shall always be provided in said passageway open grilles or transoms, one at each end, of a size not less than 10 square feet each, and such open grilles or transoms shall never be covered with glass or in any other way. In case the court does not go down to the ground level, the intake shall consist of unobstructed open ducts having an open interior area of not less than sixteen square feet at any point, and covered at each end

with a wire screen of not less than one inch mesh. Such ducts shall be so arranged as to be easily cleaned out. These ducts or intakes must in any case be either of fireproof construction or lined with No. 26 galvanized iron on inside.

27. Enlarging Existing Tenements.—No existing tenement house shall (unless the rear of the lot upon which it stands abuts upon a public alley at least ten feet wide) hereafter be enlarged or its lot be diminished so that any building on such lot shall at any point approach nearer than ten feet to the rear of the lot. Where a tenement house, now or hereafter erected, stands upon a lot, other than a corner lot, no other building shall hereafter be placed upon the front or rear of that lot, unless the minimum distance between such buildings shall be at least ten feet, if neither building exceeds the height of one story; or twelve feet if either building exceeds the height of one story, but not the height of two stories, and so on, two additional feet to be added to such minimum distance of ten feet for every story more than one in the height of the highest building on such lot. Every rear tenement hereafter erected, or every tenement that hereafter becomes a rear tenement by the erection of a building or buildings on the front of the same lot, shall have direct access to a street, or to a public alley or other public thoroughfare or public park at least sixteen feet wide, by a passageway not less than five feet wide by seven feet high.

28. Windows.—In every tenement house hereafter erected, every room, except water-closet compartments and bath rooms, shall have at least one window opening directly upon the street, or upon a yard or court of the dimensions specified in this act, and such windows shall be located as to properly light all portions of such rooms.

29. Window Area of Each Room.—In every tenement house hereafter erected, the total window area of each room, except water-closet compartments and bath rooms, shall be at least one eighth of the superficial area of the room, except

in the cellar or basement, where it shall be one sixth, and the upper half of all windows shall be made so as to open the full width. The total window area of any such room shall never be less than twelve square feet, measured to outside of sash.

30. Area of Each Room.—In every tenement house hereafter erected, all rooms, except water-closet compartments and bath rooms, shall be of the following dimensions: In each apartment there shall be at least one room containing not less than one hundred and twenty square feet of floor area, and each other room shall contain at least ninety square feet of floor area. Each room shall be in every part not less than nine feet from the finish floor to the finished ceiling; provided, that an attic room need be but nine feet high in but half its area. Except that small closets, and water-closet compartments, and bath rooms may be not less than seven feet six inches in height, and except that buffet kitchens or pantries may be less than ninety square feet of area, provided the same are not occupied or intended or designed to be occupied as bed rooms.

31. Alcoves to be Separately Lighted.—In every tenement house hereafter erected an alcove in any room shall be separately lighted and ventilated and must conform to all the requirements of other rooms, and shall not be less than ninety square feet in area. No part of any room in a tenement house hereafter erected shall be enclosed or subdivided at any time, wholly, or in part, by a curtain portiere, fixed or movable partition, or other contrivance or device, unless such part of the room so enclosed or subdivided shall contain a separate window as herein required, and shall have a floor area of not less than ninety square feet; provided, however, that closets or alcoves of not more than twenty-five square feet floor area do not come within the provisions of this section.

32. Windows in Stair Halls.—In every tenement house which is hereafter erected, which is occupied or arranged to

be occupied by more than two families on any floor, or which exceeds four stories and cellar in height, every public hall or stair hall shall have at least one window at each floor opening directly upon the street or upon a yard or court, except as otherwise provided in this section.

Any part of a hall which is shut off from any other part of said hall by a door or doors, shall be deemed a separate hall within the meaning of this section. In every tenement house hereafter erected where the public hall is not provided with a window opening directly to the outer air as above provided, there shall be a stair well not less than twelve inches wide extending from the entrance floor to the roof, and all doors leading from such public halls shall be provided with translucent glass panels of an area not less than five square feet for each door, and also with fixed transoms of translucent glass over each door.

33. Minimum Area of Hall Windows and Skylights.—

In every tenement house hereafter erected, one at least of the windows provided to light each public hall or part thereof shall have an area of at least twelve square feet measured to outside of sash. In every such house there shall be in the roof, directly over each stair well, a ventilating skylight provided with ridge ventilators having a minimum opening of forty square inches or such skylight shall be provided with fixed or movable louvres; the glazed roof of such skylight shall be not less than twenty square feet in area. In tenement houses hereafter erected where the stairs and public halls are not provided with windows on each floor opening directly into the outer air, the skylights shall be provided with both such rigid ventilators, and also with fixed or movable louvres, or movable sashes.

34. Minimum Area of Stair Hall Windows.—In every tenement house hereafter erected, the windows required by law on each floor to light or ventilate stair halls, shall be at least fifteen square feet of area measured to outside of sash. Sash doors in entrance halls and public halls shall be deemed the equivalent of a window for lighting purposes, provided

that such doors contain the amount of glazed surface prescribed for windows.

35. Area of Vent Shafts—Air Intakes.—Every vent shaft hereafter constructed in a tenement house shall be at least twenty square feet in area, and the least dimension of such vent shaft shall be at least four feet; and if the building be above sixty feet in height such vent shaft shall throughout its entire height, be increased in area three square feet for each additional twelve feet or fraction thereof; and for each twelve feet of height less than sixty feet, such vent shaft may be decreased in area three feet. Every such vent shaft shall be constructed of fireproof materials or shall be covered on the outside with metal and on the inside with metal lath and plaster. Every such vent shaft shall be provided with a horizontal air intake or duct at the bottom communicating with the street or yard or a court; such duct or air intake to be not less than four square feet in total area. Such duct shall be constructed of fireproof material or shall be lined on the inside with metal, and shall enter the shaft at a point not less than six inches above the bottom thereof, and shall be provided with a wire screen of not less than one inch mesh at each end. Such duct shall be so arranged as to be easily cleaned out.

36. Access to Rooms.—In every apartment of four or more rooms in a tenement house hereafter erected, access to every living room and bed room and to at least one water-closet compartment shall be had without passing through any bed room.

37. Basement Rooms.—In no tenement house hereafter erected, shall any room in the cellar be constructed, altered, converted or occupied for living purposes; and no room in the basement of a tenement house shall be constructed, altered, converted, or occupied for living purposes, unless all of the following conditions of this act be complied with, and at least one-third of the basement shall be above grade for

building; provided in each case of each such room the ceiling shall be at least four feet six inches above the adjoining street grades and actual ground levels.

Such room shall be at least nine feet in every part from the floor to the ceiling.

There shall be appurtenant to such room or apartment a water-closet conforming to the regulations and ordinances relating to water-closets, of the incorporated town, incorporated city or city and county in which the tenement house is or is to be built.

38. Basement Walls Dampproofed.—If the basement of any tenement house hereafter erected is used or designed to be used for living purposes it shall have all walls below the ground level and all cellar or lower floors dampproofed and waterproofed. When necessary to make such floors and walls dampproof and waterproof, the dampproofing and waterproofing shall run through the walls as high as the ground level and continue throughout the floor. All cellars and basements in such tenement houses shall be properly lighted and ventilated to the satisfaction of the department charged with the enforcement of this act.

39. Bottom of Shaft to Be Six Inches Below Floor Level.—In every tenement house hereafter erected the bottom of all shafts, courts, areas, and yards which extend to the basement for light or ventilation of living rooms, must be six inches below the floor level of the part occupied or intended to be occupied. In every tenement house all shafts, courts, areas and yards shall be properly graded and drained, and connected with the street sewer so that all water may pass freely through into it, and when required by the department charged with the enforcement of this act, shall be properly concreted.

40. Sinks and Running Water.—In every tenement house hereafter erected, there shall be in each apartment a proper sink with running water, provided there is a water system accessible to said tenement house.

41. Water-closets and Baths.—In every tenement house hereafter erected there shall be a separate water-closet in a separate compartment within each apartment, and one shower bath or bath tub in a separate compartment, shall be provided on each floor for every ten rooms or fraction thereof, and arranged so that one bath tub or shower is accessible to each apartment, provided that where there are apartments consisting of but one or two rooms there may be one water-closet compartment for every two such apartments accessible from each apartment through the public hall, and not more than twenty feet distance from an entrance of each such apartment, provided there is a water system accessible to such tenement house.

Each compartment shall not be less than two feet four inches wide and shall be enclosed with plastered partitions which shall extend to the ceiling.

Every such water-closet compartment shall have a window or windows of at least six square feet total area opening directly upon a vent shaft, court, street or yard.

However, a bath tub or shower may be placed in the separate water-closet compartment where neither bath tub or shower, or water-closet are to be used by more than one apartment.

Every water-closet compartment shall be provided with proper means for lighting same by night.

The floor of every such water-closet compartment shall be made waterproof with asphalt, tile, cement or some other non-absorbent waterproof material.

42. Rooms in Wooden Tenements.—No wooden tenement house shall hereafter be erected which shall contain more than one hundred and fifty rooms exclusive of bath rooms.

43. Height of Tenements.—No wooden tenement house exceeding three stories in height, exclusive of cellar, shall hereafter be erected. However, the building may step up to follow the grade, provided no part of the said building is over three stories in height.

A non-fireproof tenement house may be built four stories in height, provided the exterior walls are all of brick or stone or concrete and all other municipal requirements for this class of building are complied with. If in addition to above requirements all joists, girders, studding, furring and the soffits of stairs be lathed with metal lath and plastered, such tenement house may be built not to exceed six stories, provided the height limits imposed by municipal ordinance for all buildings of this particular class be not exceeded. A cellar is not a story within the meaning of this section, provided that no part of such cellar is occupied or arranged to be occupied for living purposes. However, the building may step up to follow the grade, provided that no part of said building exceeds the number of stories provided for in this section.

Every tenement house hereafter erected exceeding six stories or parts of stories in height (above the curb) shall be a fireproof tenement house. A cellar is not a story within the meaning of this section, provided no part of such cellar is occupied or arranged to be occupied for living purposes.

44. Stand Pipes, Fire Escapes, Etc.—Every tenement house shall be provided and equipped with stand pipes and with metallic fire escapes, combined with suitable metallic balconies, platforms and railings, as provided for, or which shall be provided for by the ordinances of the incorporated town, city or city and county in which the tenement house is situated. No incumbrance of any kind shall at any time be placed before, upon or against any stairway, steps or landings or fire escapes in or upon any tenement house. All fire escapes upon tenement houses shall be kept in good order and repair, and every exposed part thereof shall at all times be protected against rust by durable paint.

45. Stairs to Roof.—Every tenement house hereafter erected shall have stairs with a guide or hand rail, leading to the roof and enclosed between ceiling and roof by fireproof partitions with fireproof door to same opening

onto roof, except that in non-fireproof tenement houses hereafter erected such partitions may be of wood covered with metal on both sides. These stairs shall be at least two feet six inches wide and constructed as specified in this act. All doors in the above partitions shall be fire doors, metal lined on both sides.

46. Stairs from Entrance to Roof.—Every tenement house hereafter erected shall have at least one flight of stairs, extending from the entrance floor to the roof, and the stairs and public halls therein shall be at least three feet wide in the clear, and every non-fireproof tenement house containing not more than fifty rooms shall have a secondary flight of stairs running from the top floor down to the second floor and not less than two feet six inches wide. A fire escape may take the place of this second stairway, provided said fire escape connects directly with a public hallway or is accessible to each apartment.

47. Additional Flight of Stairs for Tenement Having More than Fifty Rooms.—Every non-fireproof tenement house hereafter erected containing over fifty rooms, exclusive of bath rooms, above the entrance story, shall also have an additional flight of stairs for every additional eighty rooms or fraction thereof; if said house contains not more than one hundred rooms above the entrance story, in lieu of an additional stairway, the stairs, stair halls and entrance halls throughout the entire building shall be at least one-half wider than is specified in this act. However, where an additional flight of stairs is added in accordance with the provisions of this section, the secondary stairway may be omitted.

48. Additional Flight of Stairs for Fireproof Tenements Having More than One Hundred and Twenty Rooms.—Every fireproof tenement house hereafter erected containing over one hundred and twenty rooms above the entrance story, exclusive of bath rooms, shall have an additional flight of stairs for every additional one hundred and

twenty rooms or fraction thereof; but if said house contains not more than one hundred and eighty rooms above the entrance story, exclusive of bath rooms, in lieu of an additional stairway the stairs, stair halls and entrance halls throughout the entire building may each be at least one-half wider than is specified in this act, and if such house contains not more than three hundred rooms, above entrance story, exclusive of bathrooms, in lieu of four stairways there may be but three stairways, provided that one of such stairways and the stair halls and entrance halls connected therewith are at least one-half wider than is otherwise specified in this act.

49. Stairs to Have Entrance from Street.—Each flight of stairs mentioned in the last two sections shall have an entrance on the entrance floor from the street or street court, or from an inner court which connects directly with the street. All stairs shall be constructed with a rise of not more than eight inches, and with treads not less than nine inches wide, exclusive of nosings. Where winders are used all treads at a point eighteen inches from the strings on the wall side shall be at least ten inches wide.

50. Width of Entrance.—Every entrance hall in a tenement house hereafter erected shall be at least three feet six inches in the clear from the entrance up to and including the stair enclosure, and beyond this point three feet wide in the clear. In every tenement house hereafter erected, access shall be had from the street to the yard, either in a direct line or through a court.

51. No Closet Under Stairs in Non-fireproof Tenements.—In non-fireproof tenement houses hereafter erected no closet of any kind shall be constructed under any stairway leading from the first story exclusive of the cellar, to the upper stories, but such space shall be left entirely open and kept clear and free from incumbrance.

52. Entrance to Cellar.—In every tenement house hereafter erected there shall be an entrance to the cellar or other lowest story from the outside of said building.

53. Increase of Height—Decrease of Lot.—No tenement house shall be increased in height, its lot decreased so that its yard shall be diminished to less than is required by this act, or so that a greater percentage of the lot shall be occupied by buildings or structures than provided for in this act. For the purpose of this section, the measurements for computing the percentage of lot to be occupied may be taken at the level of the second tier of beams (the second floor level), except in tenement houses where rooms on the ground floor are to be occupied as sleeping apartments; provided, that the space occupied by open iron fire escapes and by chimneys or flues located in yards and attached to the house, which do not exceed five square feet in area and do not obstruct the light or ventilation, shall not be deemed part of the lot occupied.

No tenement house shall be increased in height so that said building shall exceed in height by more than one half the width of the widest street on which it stands.

54. Courts for Ventilation and Light.—Any shaft or court used or intended to be used to light or ventilate rooms intended to be used for living purposes, and which may hereafter be placed in tenement houses erected prior to the passage of this act, shall not be less in area than twenty-five square feet, or less than four feet in width in any part, and such shaft shall under no circumstances be roofed or covered over at the top with a roof or skylight; every such shaft shall be provided at the bottom with a horizontal intake or duct of a size not less than four feet square and communicating directly with the street or yard, and such duct shall be so arranged as to be readily cleaned out. Such vent shaft shall be constructed of fireproof materials or shall be covered with metal on the outside and with metal lath and plaster on the inside, and

such duct shall be constructed of fireproof materials, or shall be lined on the inside with metal.

Any additional room or hall that is hereafter constructed or created in a tenement house shall comply in all respects with the provisions of this act applicable to tenement houses to be erected hereafter, except that such rooms may be the same height as the other rooms of the same story of the house.

55. Alteration Diminishing Light.—No tenement house shall be so altered that any room or public hall or stairs shall have its light or ventilation diminished in any way not approved by the health department or other department designated by municipal ordinance for that purpose.

56. Subdividing Rooms by Curtains.—No part of any room in any tenement house shall hereafter be enclosed or subdivided wholly or in part, by a curtain, portiere, fixed or movable partition, or other contrivance or device, unless such part of the room so enclosed or subdivided, shall contain a window as required by this act, and have a floor area of not less than ninety square feet; provided, however, that closets or alcoves of not more than twenty-five square feet in area do not come within the provisions of this section.

57. New Water-closets.—Every new water-closet hereafter placed in a tenement house, except one provided to replace a defective or antiquated fixture in the same location, shall comply with the provisions of this act relative to water-closets in tenement houses hereafter erected.

58. Increasing Size and Height of Wooden Tenements.—No existing wooden tenement house shall hereafter be increased in size so as to contain more than one hundred and fifty rooms exclusive of bath rooms.

No wooden tenement house shall be increased in height so as to exceed three stories, exclusive of the cellar. However, the building may step up to follow the grade, provided no part of said building is over three stories in height.

59. Altering Non-fireproof Tenements to Four Stories

—A non-fireproof tenement house may hereafter be altered to be four stories in height, provided the exterior walls are all of brick or stone or concrete and all other municipal requirements for this class of building are complied with. If in addition to the above requirements all joists, girders, studding, furring and the soffits of stairs be lathed with metal lath and plastered, such tenement houses may be built not to exceed six stories, provided the height limits imposed by municipal ordinances for all buildings of this particular class be not exceeded. A cellar is not a story within the meaning of this section, provided that no part of such cellar is occupied or arranged to be occupied for living purposes. However, the building may step up to follow the grade, provided no part of the said building exceeds the number of stories provided for in this section.

60. Altering Tenements to Six Stories.—No tenement house shall hereafter be altered to exceed six stories or parts of stories in height unless it is a fireproof tenement house. A cellar is not a story within the meaning of this section, provided no part of such cellar is occupied or arranged to be occupied for living purposes.

61. Stairs to Roof Not to Be Removed.—No stairs leading to the roof in any tenement house shall be removed or replaced with a ladder, unless a new stairway is built in conformity with requirements of this act.

62. Public Hall Not to Be Reduced.—No public hall or stairs in a tenement house shall be reduced in width so as to be less than the minimum width prescribed in this act.

63. Health Department May Require Lights in Hall.—In every tenement house containing fifteen rooms or more, where the public halls and stairs are not in the opinion of the health department, or other department designated by municipal ordinance for that purpose, sufficiently lighted, the owner of such house shall keep a proper light burning

in the hallway near the stairs upon each floor from sunrise to sunset.

64. Lights to Be Kept Burning by Owner.—In every tenement house containing fifteen rooms or more, a proper light shall be kept burning by the owner in the public hallways, near the stairs, upon the entrance floor, and upon the second floor above the entrance floor of said house, every night from sunset to sunrise throughout the year, and upon all other floors of the said house from sunset until ten o'clock in the evening.

65. No Water-closets in Cellars.—No water-closets shall be maintained in the cellar of any tenement house without a special permit in writing from the health department, or other department designated by municipal ordinance for that purpose, which shall have power to make rules and regulations governing the maintenance of such closets.

66. Water-closets in Existing Tenements.—In every tenement house existing prior to the passage of this act, at least one water-closet shall be provided for every two families. Provided, however, that the health department or other department designated by municipal ordinance for that purpose may exempt any tenement house existing prior to the passage of this act from the provision in this section above contained, whenever, in the judgment of said department, it would not be detrimental to the health of the occupants of said tenement house, and the written permit be signed by an officer of said department authorized to do so and filed in said department as a part of its records; provided, further, that the above exemption shall not apply to extensions of or additions to tenement houses existing prior to the passage of this act.

67. Basement Rooms for Living Purposes.—In no now existing tenement house shall any room in the cellar be constructed, altered, converted or occupied for living purposes; and no room in the basement of a tenement house shall be constructed, altered, or converted to be occupied for

living purposes, unless all of the following conditions of this act be complied with, and at least one-third of the basement shall be above grade for building; provided, in each case it shall be at least four feet six inches above the street grade and actual ground level. Such rooms shall be at least eight feet six inches high in all now existing tenement houses in every part, from the floor to the ceiling.

There shall be appurtenant to such room or apartment a water-closet conforming to the regulations and ordinances relating to water-closets, of the incorporated town, incorporated city, or city and county in which the tenement house is or is to be built.

All walls shall be dampproofed, and there shall be an open area way extending to bottom of basement floor and running clear across outside of at least one room in each apartment.

68. Floors and Walls Around Water-closets.—In all tenement houses the floor and wall surfaces beneath and around all water-closets and sinks shall be maintained in good order and repair, and if of wood shall be kept well painted with light colored paint.

69. Keeping Tenements in Order.—The owner of every tenement house shall see that such house and all parts thereof shall be kept in good order and the roof shall be kept so as not to leak, and all rain water shall be so drained and conveyed therefrom as to prevent its dripping on the ground or causing dampness in the walls, ceilings, yards, or areas.

The owner of every tenement house shall see that such house and every part thereof shall be kept clean and free from any accumulation of dirt, filth or garbage or other matter in or on the same, or in the yards, courts, passages, areas or alleys connected or belonging to the same.

70. Walls of Courts to Be Whitewashed.—The walls of all yard courts, inner courts and shafts, unless built of light colored brick or stone, shall be thoroughly whitewashed

by the owner, or shall be painted a light color by him and so maintained.

71. Kalsomining and Painting.—In all tenement houses, the health department or other department designated by municipal ordinance for that purpose may require the walls and ceilings of every room that does not open directly on the street to be kalsomined white or painted with white paint, when necessary to improve the lighting of such rooms, and may require this to be renewed as often as may be necessary.

72. Using Wall Paper.—No wall paper shall be placed upon a wall or ceiling of any tenement house unless all wall paper shall be first removed therefrom and said wall and ceiling thoroughly cleaned.

73. Garbage Receptacles.—The owner of every tenement house shall provide for said building proper and suitable conveniences or receptacles for ashes, rubbish, garbage, refuse and other matter.

74. Keeping Stock Prohibited.—No horse, cow, calf, swine, goat or sheep, chickens or poultry shall be kept in a tenement house, or within twenty feet thereof on the same lot, and no tenement house or the lot or premises thereof, shall be used for a lodging house or stable, or for the storage or handling of rags.

75. Janitor for Tenements of More than Eight Families.—Whenever there shall be more than eight families living in any tenement house, in which the owner does not reside, there shall be a janitor, housekeeper, or some responsible person who shall reside in said house and have charge of same, as the department charged with the enforcement of this act shall so require.

76. Four Hundred Feet of Air for Each Person.—No room in any tenement house shall be so overcrowded that there shall be afforded less than four hundred cubic feet of air to each person occupying such room.

77. Cannot Store Combustibles.—No tenement house or any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of any combustible article, except under such conditions as may be prescribed by the department of any incorporated town, incorporated city, or city and county to which this act applies, which are now charged with the enforcement of laws, ordinances, or regulations, relating to the erection of buildings, the protection of public health, and police and fire protection. No tenement house nor any part thereof, nor of the lot upon which it is situated, shall be used as a place of storage, keeping or handling of any article dangerous or detrimental to life or health, nor for the storage, keeping or handling of feed, hay, straw, excelsior, cotton, paper stock, feathers or rags.

78. No Bakery in Any Except Fireproof Tenement.—No bakery, and no place of business in which fat is boiled, shall be maintained in any tenement house which is not fireproof throughout, unless the ceilings and side walls of said bakery or place where fat boiling is done are made safe by fireproof materials around the same, and there shall be no openings either by door or window, dumb waiter shafts or otherwise, between said bakery or said place where fat is boiled in any tenement house and the other parts of said building.

79. Windows Where Paint Is Stored.—All transoms and windows opening into halls from any portion of a tenement house where paint, oil, spirituous liquors or drugs are stored for the purpose of sale or otherwise, shall be glazed with wire glass or they shall be removed and closed up as solidly as the rest of the wall. And all doors leading into such hall from such portion shall be made fireproof.

80. Scuttles.—All scuttles and pent houses and all stairs or ladders leading thereto shall be easily accessible to all tenants of the building, and kept free from incumbrance, and ready for use at all times. No scuttle and no pent house

door shall at any time be locked with a key, but either may be fastened on the inside by movable bolts or hooks.

81. Outside Windows.—No room in a tenement house erected prior to the passage of this act shall hereafter be occupied for living purposes, unless it shall have a window opening directly upon the street, or upon a yard not less than ten feet deep, or above the roof of an adjoining building, or upon a court of not less than twenty square feet in area, open to the sky without roof or skylight, unless such room is located on the top floor and is adequately lighted and ventilated by a skylight opening directly to the outer air, or is on the top floor and has a window opening upon a court not less than ten square feet in area and not more than three feet below the top of the walls of said court. Every room which does not comply with the above provisions shall be provided with a sash window, opening into an adjoining room in the same apartment which latter room either opens directly on the street or on a yard of the above dimensions, or itself connected by a similar sash window or series of windows with such an outer room. Said sash window shall be a vertically sliding pulley-hung sash not less than three feet by five feet between stop beads, both halves being made so as to readily open, and shall be glazed with translucent glass, and so far as possible it shall be in line with windows in outer rooms opening on the street or yard as to afford a maximum of light and ventilation. In the case of rooms located in apartments that extend through from the street to the yard, thus ensuring thorough ventilation, where such rooms are already provided either with windows, window openings, glass sliding doors, or large alcove openings to adjoining rooms, but do not comply with all the provisions of this section, the health department or other department designated by municipal ordinance for that purpose when satisfied that no material improvement in the light and ventilation of such rooms can be had that would warrant the providing of new windows of the size and kind specified, may permit the occupancy of such rooms for living

purposes in the following cases, provided such improvements or alterations as may be practicable and as are required by said department are made by the owner:

Where there is an existing window or window opening from such interior room to an adjoining room, and such window or opening is not less than ten square feet in area.

Where there is an existing glass sliding door or an alcove opening of sufficient size from such interior room to an adjoining room.

Where rooms located on the top floor open upon a court of less size than twenty square feet but such rooms have sufficient light and ventilation.

Where owing to the size of partitions, arrangement of rooms, location of fixed closets or stairs, or the interposition of air shafts, it is impracticable to provide a window of the required size, and a window as large as practicable is provided.

82. Glass Doors.—In all now existing tenement houses whenever a public hall on any floor is not light enough in the day time to permit a person to read in every part thereof without the aid of artificial light, the wooden panels in the doors located at the ends of the public halls and opening into rooms shall be removed, and ground glass or other translucent glass or wire glass panels of an aggregate area of not less than four square feet for each door shall be substituted; or said public hall may be lighted by a window at the end thereof, with the plane of the window at right angles to the axis of the said hall, said window opening upon the street or upon a yard or court.

83. Woodwork Enclosing Water-closets and Sinks.—In all now existing tenement houses, the woodwork enclosing all water-closets shall be removed from the front of said closets and the space underneath the seat shall be left open. The floor and other surface beneath and around the closet shall be maintained in good order and repair, and if of wood shall be kept well painted with light colored paint.

In all now existing tenement houses the woodwork enclosing sinks located in public halls or stairs shall be removed, and the space underneath sink shall be left open. The floors and wall surfaces beneath and around the sink shall be maintained in good order and repair, and if of wood shall be well painted.

84. Window at Bottom of Shaft.—In all now existing tenement houses there shall be at the bottom of every shaft or inner court, a door or window giving sufficient access to each shaft or court to enable it to be properly cleaned out.

85. Sinks and Vaults to Be Replaced by Individual Water-closets.—In all tenement houses erected prior to the passage of this act, where a connection with a sewer is possible, all school sinks, privy vaults or other similar receptacles used to receive fecal matter, urine or sewage, shall be completely removed and the place where they are located properly disinfected under the direction of the health department or other department designated by municipal ordinance for that purpose. Such appliances shall be replaced by individual water-closets of durable non-absorbent material, properly sewer-connected, and with individual traps, and properly connected flush tanks providing an ample flush of water to thoroughly cleanse the bowl. Each water-closet shall be located in a compartment completely separated from every other water-closet, and such compartment shall contain a window of not less than three square feet in area opening directly to the street, or yard, or on a court of the minimum size prescribed in this act. The floors of the water-closet compartment shall be waterproof as provided in this act. Where water-closets are placed in the yard to replace school sinks or privy vaults, the structure containing the water-closets shall not exceed ten feet in height; such structure shall be provided with a ventilating skylight in the roof, of adequate size, and each water-closet shall be located in a compartment separated completely from every other water-closet. Proper and adequate means for lighting the structure at night shall be provided. There shall be provided at least one water-closet

for every two families in every tenement house existing on the day this act takes effect, subject to the provisions of this act. Except as in this section otherwise provided such water-closets and all plumbing in connection therewith shall be in accordance with the ordinances and regulations in relation to plumbing and drainage.

86. Penthouse or Scuttle in Roof.—Every tenement house erected prior to the passage of this act, shall have in the roof a pent house or a scuttle which shall not be less than twenty-one by twenty-eight inches, and located in the ceiling of a public hall. All scuttles shall be covered on the outside with metal and shall be provided with stairs or stationary ladders leading thereto and easily accessible to all tenants of the building. No scuttle and no bulkhead door shall at any time be locked with a key, but either may be fastened on the inside by movable bolts or locks. All key locks on scuttles and on pent house doors shall be removed.

87. Plans to Be Submitted to Building Department.—Before the construction or alteration of a tenement house, or the alteration or conversion of a building for use as a tenement house is commenced, and before the construction or alteration of any building or structure on the same lot with a tenement house, the owner or his agent or architect, shall submit to the building department subject to the inspection and approval of the health department, or if there be no health department or no building department then to such departments as shall be designated for that purpose by municipal ordinance, of the municipality in which said work is contemplated, a detailed statement in writing, verified by the affidavit of a person making the same, of the specifications for the construction and for the light and ventilation of such tenement house or building, upon blanks or forms to be furnished by such departments, and also a full and complete copy of the plans of such work. Such statement shall give in full the name and residence, by street and number, of the owner or owners of such tenement house or building. If such construction, alteration or conversion is proposed to be

made by any other person than the owner of the land in fee, such statement shall contain the full name and residence, by street and number, not only of the owner of the land, but of every person interested in such tenement house, either as owner, lessee, or in any representative capacity. Said affidavit shall allege that said specifications and plans are true and contain a correct description of such tenement house, building, structure, lot and proposed work. The statements and affidavits herein provided for may be made by the owner, or the person who proposes to make the construction, alteration or conversion, or by his agent or architect.

No person, however, shall be recognized as the agent of the owner unless he shall file with the department of health or other department by municipal ordinance designated for that purpose, a written instrument signed by such owner designating him as agent. Any false swearing in a material point in such affidavit shall be deemed perjury. Such specifications, plans and statements shall be filed in said departments and shall be deemed public records, and no such specifications, plans or statements shall be removed from said departments.

88. Issue of Certificates.—The said departments shall cause all such plans and specifications to be examined. If such plans and specifications conform to the provisions of this act relative to the light and ventilation and sanitation of tenement houses hereafter erected or altered, as the case may be, the health department or other department designated by municipal ordinance for this purpose shall issue a written certificate to that effect to the person submitting the same, and if they conform to the provisions of this act relative to the fire protection of tenement houses hereafter erected or altered, as the case may be, the building department or other department designated by municipal ordinance for that purpose shall issue a written certificate to that effect to the person submitting the same. Such certificates shall state that

the tenement house act has been complied with. Each department may, from time to time, approve changes in any plans and specifications previously approved by it, provided the plans and specifications when so changed, shall be in conformity with the law. The construction, alteration or conversion of such tenement house, building or structure or any part thereof, shall not be commenced until the filing of such specifications, plans and statements, and the approval thereof, as above provided. The construction, alteration or conversion of such house, building or structure, shall be in accordance with such approved specifications and plans. Any permit or approval which may be issued by the health department and the building department or other departments by municipal ordinance designated for that purpose, but under which no work has been done above the foundation walls within one year from the time of the issuance of such permit or approval, shall expire by limitation. Said departments shall have power to revoke or cancel any permit or approval in case of any failure or neglect to comply with any of the provisions of this act, or in case any false statement or representation is made in any specification, plans or statements submitted or filed for such permit or approval.

89. Occupation Certificates.—No building hereafter constructed as or altered into a tenement house, shall be occupied in whole or in part for human habitation until the issuance of a certificate by the health department or other department by municipal ordinance designated for that purpose that said building conforms in all respects to the requirements of this act relative to the light and ventilation and sanitation of tenement houses hereafter erected, nor until the issuance by the building department or other department by municipal ordinance designated for that purpose of a certificate that said building conforms in all respects to the requirements of this act relative to fire protection of tenement houses hereafter erected. Such certificates shall be issued within ten days after written application therefor, if said building at the date of such application shall be entitled thereto.

If any building hereafter constructed as or altered into a tenement house, be occupied in whole or in part for human habitation in violation of this law, during such unlawful occupancy said premises shall be deemed unfit for human habitation and the department of health or other department charged with the enforcement of this act may cause them to be vacated accordingly.

90. Enforcing the Law—Except as herein otherwise provided, the provisions of this act shall be enforced by the departments of any incorporated town, incorporated city, or city and county to which this act applies, which are now charged with the enforcement of laws, ordinances, and regulations relating to the erection of buildings, the protection of public health or police or fire protection.

The department of health or other department charged with the enforcement of this act in any incorporated town, incorporated city or city and county to which this act applies and the officers and agents of such departments shall have the right and it shall be its and their duty to enter into tenement houses and buildings within the said municipal corporation for the purpose of inspecting such houses and buildings to secure compliance with the provisions of this act, and to prevent violations thereof.

Nothing in this act shall be construed to abrogate or impair the powers of the department of health, the department of public works or of the courts, to enforce any provisions of the charter or building ordinances and regulations of any incorporated town, incorporated city, or city and county, not inconsistent with this act, or to prevent or punish violations thereof.

The provisions of this act shall be held to be the minimum requirements adopted for the protection, health and safety of the community. Nothing in this act contained shall be construed as prohibiting the local legislative body of any incorporated town, incorporated city or city and county, from enacting from time to time supplementary ordinances imposing further restrictions. But no ordinance, regulation or

ruling of any municipal authority shall repeal, amend, modify or dispense with any provision of this act.

91. Penalty for Violation of Law.—Every person who shall violate or assist in violation of any provision of this act shall be guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months or by a fine not exceeding five hundred dollars, or by both, and in addition to the penalty therefor, shall be liable for all costs, expense, and disbursements paid or incurred by the department, by any of the officers thereof, or by any agent, employee or contractor of the same, in the prosecution of such violation.

92. Court Proceedings.—Except as herein otherwise specified the procedure for the prevention of violations of this act, or for the vacation of premises unlawfully occupied, or for other abatement of nuisance in connection with a tenement house, shall be as set forth in charter and ordinances of the municipality in which the procedure is taken. In case any tenement house, building or structure or any part thereof is constructed, altered, converted or maintained in violation of any provision of this act or of any order or notice of the departments charged with its enforcement, or in case a nuisance exists in any such tenement house, building or structure or upon the lot on which it is situated, said departments may institute any appropriate action or proceeding to prevent such unlawful construction, alteration, conversion or maintenance, to restrain, correct or abate such violation or nuisance, to prevent the occupation of said tenement house, building or structure, or to prevent any illegal act, conduct or business in or about such tenement house or lot. In any such action or proceeding said departments may, by affidavit setting forth the facts, apply to the superior court, or to any judge thereof, for an order granting the relief for which said action or proceeding is brought, or for an order enjoining all persons from doing or permitting to be done any work in or about such tenement house, building, structure or lot, or from occupying or using the same for any purpose, until the entry of final judgment or order. In case any notice or order

issued by said departments is not complied with, said departments may apply to the superior court, or to any judge thereof, for an order authorizing said departments to execute and carry out the provisions of said notice or order, to remove any violation specified in said order or notice, or to abate any nuisance in or about such tenement house, building or structure, or the lot upon which it is situated. The court, or any judge thereof, is hereby authorized to make any order specified in this section. In no case shall the said departments or any officer thereof or the municipal corporation be liable for costs in any action or proceeding that may be commenced in pursuance of this act.

93. Fine Becomes Lien on Tenement.—Every fine imposed by judgment upon a tenement house owner shall be a lien upon the house in relation to which the fine is imposed from the time of the filing of a certified copy of said judgment in the office of the recorder of the county in which said tenement house is situated, subject only to taxes and assessments and water rates, and to such mortgage and mechanics' liens as may exist thereon prior to such filing; and it shall be the duty of the department of health or other department by municipal ordinance designated for that purpose, upon the entry of such judgment, to forthwith file the copy as aforesaid, and such copy upon filing shall be forthwith indexed by the recorder in the index of mechanics' liens.

94. Notice of Action.—In any action or proceeding instituted by the departments charged with the enforcement of this act, the plaintiff or petitioner may file in the county recorder's office of the county where the property affected by such action or proceeding is situated, a notice of the pendency of such action or proceeding. Said notice may be filed at the time of the commencement of the action or proceeding, or at any time afterwards before final judgment or order, or at any time after the service of any notice or order issued by said department. Each county recorder with whom such notice is filed shall record it, and shall index it in the name of each person specified in a direction subscribed by an

officer of the department instituting such action or proceeding. Any such notice may be vacated upon the order of a judge of the court in which such action or proceeding was instituted or is pending. The recorder of the county where such notice is filed is hereby directed to mark such notice and any record or docket thereof as canceled of record, upon the presentation and filing a certified copy of such order.

95. Tenement Owner to File Statement in Department of Health.—Every owner of a tenement house and every lessee of the whole house, or other person having control of a tenement house, shall file in the department of health or other department designated by municipal ordinance for that purpose a notice containing his name and address, and also a description of the property, by street and number, and otherwise, as the case may be, in such manner as will enable the departments charged with the enforcement of this act to easily find the same; and also the number of apartments in each house, the number of rooms in each apartment, and the number of families occupying the apartments. In case of a transfer of any tenement house, it shall be the duty of the grantee of said tenement house to file in the department of health or other department designated by municipal ordinance for that purpose a notice of such transfer, stating the name of the new owner, within thirty days after such transfer. In case of the devolution of the said property by will, it shall be the duty of the executor and the devisee, if more than twenty-one years of age, and in the case of devolution of such property by inheritance without a will, it shall be the duty of the heirs, or in case all the heirs are under age, it shall be the duty of the administrator of the deceased owner of said property to file in said department a notice, stating the death of said owner and the names of those who have succeeded to his interests, within thirty days after the death of the decedent, in case he died intestate, and within thirty days after the probate of his will, if he died testate.

96. Owner to File Notice of Agent to Receive Service of Process.—Every owner, agent or lessee of a tenement

house shall file in the department of health or other department designated by municipal ordinance for that purpose, a notice containing the name and address of such agent of such houses, for the purpose of receiving service of process, and also a description of the property, by street and number or otherwise, as the case may be, in such manner as will enable the department charged with the enforcement of this act to easily find the same. The name of the owner or lessee may be filed as agent for this purpose.

97. Public Records.—The names and addresses filed in accordance with this act shall be indexed by the department of health or other department designated by municipal ordinance for that purpose, in such a manner that all of those filed in relation to each tenement house shall be together and readily ascertainable. The board of health or other department designated by municipal ordinance for that purpose shall provide the necessary books and clerical assistance for that purpose, and the expense thereof shall be paid by the municipality. Said indexes shall be public records, open to public inspection during business hours.

98. Serving Notices.—Every notice or order in relation to a tenement house shall be served five days before the time for doing the thing in relation to which it shall have been issued.

99. Penalty for Using Tenement as House of Prostitution.—A tenement house shall be subject to a penalty of one thousand dollars, if it or any part of it shall be used for the purposes of a house of prostitution or assignation of any description, with the permission of the owner thereof, or his agent, and said penalty shall be a lien upon the house and the lot upon which the house is situated.

A tenement house shall be deemed to have been used for the purposes specified with the permission of the owner or lessee thereof, if summary proceedings for the removal of the tenants of said tenement house, or so much thereof as is unlawfully used, shall not have been commenced within five

days after notice of such unlawful use, served by the department charged with the enforcement of this act.

100. Competent Evidence.—In a prosecution against an owner or agent of a tenement house under the Penal Code, or in an action to establish a lien under this act, the general reputation of the premises in the neighborhood shall be competent evidence, but shall not be sufficient to support a judgment without corroborative evidence, and it shall be presumed that their use was with the permission of the owner or lessee; provided, that such presumption may be rebutted by evidence.

101. Suit Against Tenement House.—Said action shall be brought against the tenement house as defendant. Said house may be designated in the title of the action by its street and number or in any other method sufficiently precise to secure identification. The property shall be described in the complaint. The plaintiff, except as hereinafter provided, shall be any department charged with the enforcement of this act.

Said action shall be brought in the superior court in the county or city and county in which the property is situated. At, or before the commencement of the action, the complaint shall be filed in the office of the clerk of the county or city and county, together with a notice of the pendency of the action, containing the names of the parties, the object of the action, and a brief description of the property affected thereby.

The judgment in such action, if in favor of the plaintiff, shall establish the penalty sued for as a lien upon said premises, subject only to taxes, assessments, and to such mortgages and mechanics' liens as may exist thereon prior to the filing of the notice of pendency of the action.

102. Inconsistent Laws Repealed.—All statutes of the state and ordinances of incorporated town, incorporated cities and cities and counties, as far as inconsistent with the provisions of this act, are hereby repealed; provided, that nothing in this act contained shall be construed as repealing or abrogating any present law or ordinance in any incorporated town, incorporated city or city and county of the state, further restricting the percentage of the lot to be covered

by a tenement house, the number of stories or the height of such house, the number of apartments therein, the occupation thereof, the materials to be used in its construction, or increasing the size of yards or courts, the air space to each individual occupying a room, the requirements as to sanitation, ventilation, light, protection against fire.

Nothing in this act contained shall be construed as abrogating, diminishing, minimizing or denying the power of any incorporated town, incorporated city or city and county by ordinance to further restrict the percentage of the lot to be covered by a tenement house within said municipality, the number of stories or the height of such house, the number of apartments therein, the occupation thereof, the materials to be used in its construction, or increasing the size of yards or courts, the air space to each individual occupying a room, the requirements as to sanitation, ventilation, light, protection against fire.

Except as herein otherwise provided, every tenement house shall be constructed and maintained in conformity with the existing law, but no ordinance, regulation or ruling of any municipal authority shall repeal, modify or dispense with any provisions of this act.

103. Improvements to Be Made in One Year.—All improvements specifically required by this act upon tenement houses erected prior to its date of passage, shall be made within one year from said date, or at such earlier period as may be fixed by the boards of health charged with the enforcement of this act.

104. Permits and Licenses.—Every person desiring to construct a tenement house shall obtain a permit from the department charged with the enforcement of this act. Every owner or lessee of a tenement house shall obtain at the beginning of each year a license from the department charged with the enforcement of this act.

Act of the Legislature, approved April 10, 1911.

Mechanics' Liens.

Section 277.—NEW LIEN LAW.—The Legislature of 1911 passed a new lien law, which repeals all the provisions of the old law inconsistent with the new; and the new law specifically provides that mechanics' liens shall hereafter be direct liens upon the property. The new lien law is printed below in full.

Section 278.—THE PERSONS ENTITLED TO LIENS.—Mechanics, material-men, contractors, sub-contractors, artisans, architects, machinists, builders, miners, teamsters and draymen, and all persons and laborers of every class performing labor upon, or bestowing skill or other necessary services, or furnishing materials to be used or consumed in or furnishing appliances, teams and power contributing to the construction, alteration, addition to or repair, either in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, wagon road or other structure, shall have a lien upon the property upon which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished and for the value of the use of such appliances, teams or power, whether at the instance of the owner, or of any other person acting by his authority or under him, as contractor or otherwise; and every contractor, sub-contractor, architect, builder or other person having charge of the construction, alteration, addition to or repair either in whole or in part of any building, or other improvement as aforesaid, shall be held to be the agent of the owner for the purposes of this law.

Act of the Legislature, approved May 1, 1911.

Section 279.—MINING CLAIM LIENS.—Any person who performs labor in any mining claim or claims, or in or upon any real property worked as a mine, either in the development thereof or in working thereon by the subtractive process, or furnishes materials to be used or consumed therein, has a lien upon the same and the works

owned and used by the owners for milling or reducing the ores from the same, for the value of the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of such mining claim or claims or real property worked as a mine, or his agent; and every contractor, sub-contractor, superintendent or other person having charge of any mining or work or labor performed in and about such mining claim or claims or real property worked as a mine, either as lessee or under a working bond or contract thereon, shall be held to be the agent of the owner.

Act of the Legislature, approved May 1, 1911.

Section 280.—LIMIT OF LIENS.—The liens provided for shall be direct liens, and shall not in the case of any claimants, other than the contractor, be limited, as to amount, by any contract price agreed upon between the contractor and the owner except as hereinafter provided; but said several liens shall not in any case exceed in amount the reasonable value of the labor done or material furnished, or both, for which the lien is claimed, nor the price agreed upon for the same between the claimant and the person by whom he was employed; nor in any case, where the claimant was employed by a contractor, or sub-contractor, shall the lien extend to any labor or materials not embraced within or covered by the original contract between the contractor and the owner, or any modification thereof made by or with the consent of such owner, and of which such contract, or modification thereof the claimant shall have had actual notice before the performance of such labor or the furnishing of such materials.

Act of the Legislature, approved May 1, 1911.

Section 281.—FILING OF CONTRACT AND BOND.—The filing of the original contract, or modification thereof, in the office of the county recorder of the county where the property is situated, before the commencement of the work,

shall be equivalent to the giving of actual notice by the owner to all persons performing work or furnishing materials thereunder. In case said original contract shall, before the work is commenced, be so filed, together with a bond of the contractor with good and sufficient sureties in an amount not less than 50 per cent of the contract price named in said contract (which bond shall in addition to any conditions for the performance of the contract, be also conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used in such work, and shall also by its terms be made to inure to the benefit of any and all persons who perform labor upon or furnish materials to be used in the work described in said contract so as to give such persons a right of action to recover upon said bond in any suit brought to foreclose the liens or in a separate suit brought on said bond), then the court must, where it would be equitable so to do, restrict the recovery under such liens to an aggregate amount equal to the amount found to be due from the owner to the contractor, and render judgment against the contractor and his sureties on said bond for any deficiency or difference there may remain between said amount so found to be due to the contractor and the whole amount found to be due to claimants for such labor or materials or both. No change or alteration of the work or modification of any such contract between the owner and his contractor shall release or exonerate any surety or sureties upon any bond given under this section.

Act of the Legislature, approved May 1, 1911.

Section 282.—LIMIT TO OWNER'S LIABILITY.—

It is the intent and purpose of this section to limit the owner's liability, in all cases, to the measure of the contract price, where he shall have filed or caused to be filed in good faith with his original contract a valid bond with good and sufficient sureties in the amount and upon the conditions as herein provided. It shall be lawful for the owner to protect himself against any failure of the contractor to perform his contract and make full payment for all work done and

materials furnished thereunder by exacting such bond or other security as he may deem satisfactory.

Act of the Legislature, approved May 1, 1911.

Section 283.—NOTICE TO OWNER OF LABOR PERFORMED AND MATERIALS FURNISHED.—

Any of the persons mentioned in the preceding section, except the contractor, may at any time give to the owner a notice that they have performed labor or furnished materials, or both, to the contractor or other person acting by the authority of the owner, or that they have agreed to do so, stating in general terms the kind of labor and materials and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both, and any of said persons who shall on the written demand of the owner refuse to give such notice shall thereby deprive himself of the right to claim a lien under this chapter. Such notice may be given by delivering the same to said owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, or by leaving it at the latter's office with some person in charge. No such notice shall be invalid by reason of any defect in form, provided it is sufficient to inform the owner of the substantial matters herein provided for. Upon such notice being given it shall be lawful for the owner to withhold, and in the case of property which, for reasons of public policy or otherwise, is not subject to the liens in this chapter provided for, the owner or person who contracted with the contractor shall withhold from his contractor sufficient money due or that may become due to such contractor to answer such claim and any lien that may be filed therefor, including the reasonable cost of any litigation thereunder.

Act of the Legislature, approved May 1, 1911.

Section 284.—LAND SUBJECT TO LIEN.—The land upon which any building, improvement, well or structure is

constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of the material for the same, the land belonged to the person who caused said building, improvement, well or structure to be constructed, altered or repaired; but if such person owned less than fee simple estate in such land, then only his interest therein is subject to such lien, except as hereinafter provided.

Act of the Legislature, approved May 1, 1911.

Section 285.—WHEN LIEN MUST BE FILED.—

Every original contractor, claiming the benefit of this law, within sixty days after the completion of his contract; and every person save the original contractor within thirty days after he has ceased to labor or has ceased to furnish materials, or both, or at his option, within thirty days after the completion of the original contract, if any, under which he was employed, must file for record with the county recorder of the county or city and county in which such property or some part thereof is situated a claim of lien.

Act of the Legislature, approved May 1, 1911.

Section 286.—CLAIM OF LIEN.—The claim of lien must be in writing, and must contain a statement of his demand after deducting all just credits and offsets, with the name of the owner or reputed owner, if known, also the name of the person by whom he was employed, or to whom he furnished the materials, with a statement of the price if any agreed upon for the same and when payable, and of the work agreed to be done and when the same was to be done, if agreed upon, and also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of himself or of some other person.

Act of the Legislature, approved May 1, 1911.

Section 287.—COMPLETION.—Any trivial imperfection in the said work, or in the completion of any contract by any lien claimant, or in the construction of any building, improvement or structure, or of the alteration, addition to, or repair thereof, shall not be deemed such a lack of completion as to prevent the filing of any lien. And, in all cases, any of the following shall be deemed equivalent to a completion for all the purposes of this law: the occupation or use of a building, improvement, or structure, by the owner, or his representative; or the acceptance by said owner or said agent, of said building, improvement, or structure; or cessation from labor for thirty days upon any contract or upon any building, improvement or structure or the alteration, addition to, or repair thereof; or the filing of the owner's notice of completion.

Act of the Legislature, approved May 1, 1911.

Section 288.—OWNER'S NOTICE OF COMPLETION.—The owner may within ten days after completion of any contract, or within forty days after cessation from labor thereon, file for record in the office of the county recorder of the county where the property is situated, a notice setting forth the date when the same was completed, or on which cessation from labor occurred, together with his name and the nature of his title, and a description of the property sufficient for identification, which notice shall be verified by himself or some other person on his behalf.

The fee for recording the same shall be one dollar.

In case such notice be not so filed, then the said owner and all person deraining title from or claiming any interest through him shall be estopped in any proceedings for the foreclosure of any lien from maintaining any defense therein based on the ground that said lien was not filed within the time provided in this law; provided, that all claims of lien must be filed within ninety days after the completion of any building, improvement or structure, or the alteration, addition or repair thereto.

Act of the Legislature, approved May 1, 1911.

Section 289.—HOW LONG LIEN CONTINUES.—

No lien binds any property for a longer period than ninety days after the same has been filed, unless proceedings be commenced in a proper court within that time to enforce the same; or, if a credit be given, then ninety days after the expiration of such credit; but no lien continues in force for a longer time than one year from the time the work is completed, by any agreement to give credit. In case such proceedings be not prosecuted to trial within two years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution, and in all cases, the dismissal of such action (unless it be expressly stated that the same is without prejudice) or a judgment rendered therein that no lien exists, shall be equivalent to the cancellation and removal from the record of such lien.

Act of the Legislature, approved May 1, 1911.

Section 290.—WHEN BUILDING WILL BE HELD TO HAVE BEEN CONSTRUCTED AT OWNER'S INSTANCE.—

Every building or other improvement or work, constructed, altered or repaired upon any land with the knowledge of the owner or of any person having or claiming any estate therein, and the work or labor done or materials furnished with the knowledge of the owner or persons having or claiming any estate in the land, shall be held to have been constructed, performed or furnished at the instance of such owner or person having or claiming any estate therein; and such interest owned or claimed shall be subject to any lien filed, unless such owner or person having or claiming any estate therein shall, within ten days after he shall have obtained knowledge of such construction, alteration or repair or work or labor, give notice that he will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the property, and shall also, within the same period, file for record a verified copy of said notice in the office of the county recorder of the said county in which said property or some part thereof is situated. Said notice shall contain a description of the property affected

thereby sufficient for identification, with the name, and the nature of the title or interest of the person giving the same. The notice so recorded may be verified by anyone having a knowledge of the facts, on behalf of the owner or person for whose protection the notice is given.

Act of the Legislature, approved May 1, 1911.

Section 291.— CONTRACTOR MAY RECOVER ONLY AMOUNT DUE HIM.—Any contractor shall be entitled to recover, upon a lien filed by him, only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid, and embraced within his contract; and in all cases where a lien shall be filed under this act for work done or for materials furnished to any contractor, he shall defend any action brought thereon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien is filed; and in case of judgment against the owner or his property upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor, or his bondsmen or sureties on any bond given for the faithful performance of his contract, any amount so paid by him, in excess of the contract price, and for which the contractor was originally the party liable. No act done by such owner in compliance with any of the provisions of this law shall be held to be a prevention of the performance of any such contract by the contractor, or to have exonerated the sureties on any bond given for faithful performance, or for the payment of liens of persons performing labor or furnishing materials, or both; provided that such act was done in good faith and without design to injure or harass any one.

Act of the Legislature, approved May 1, 1911.

Section 292.—DEFICIENCY OF PROCEEDS UNDER DECREE OF FORECLOSURE.—Whenever on the sale of the property subject to liens, under the judgment or decree of foreclosure of such lien, there is a deficiency of proceeds, judgment for the deficiency may be docketed against the party personally liable therefor in like manner and with like effect as in action for the foreclosure of mortgages.

Act of the Legislature, approved May 1, 1911.

Section 293.—CLAIMANTS MAY JOIN IN SUIT.—Any number of persons claiming liens may join in the same action, and when separate actions are commenced, the court may consolidate them. The court must also allow, as a part of the costs, the money paid for verifying and recording the lien, such costs to be allowed to each claimant whose lien is established, whether he be plaintiff or defendant, or whether they all join in one action or separate actions are consolidated.

Act of the Legislature, approved May 1, 1911.

Section 294.—PERSONAL ACTION TO RECOVER DEBT.—Nothing contained in this law shall be construed to impair or effect the right of any person to whom any debt may be due for work done or materials furnished to maintain a personal action to recover said debt against the person liable therefor; and the person bringing such personal action may take out an attachment therefor, notwithstanding his lien, and in his affidavit to procure an attachment need not state that his demand is not secured by a lien; but the judgment, if any, obtained by the plaintiff in such personal action shall not be construed to impair or merge any lien held by plaintiff; provided, only, that any money collected on said judgment shall be credited on the amount of such lien in any action brought to enforce the same.

Act of the Legislature, approved May 1, 1911.

Section 295.—FALSE NOTICE OF CLAIM.—Any person who shall wilfully give a false notice of his claim

to the owner shall forfeit his lien. Any person who shall wilfully include in his claim work or materials not performed upon or furnished for the property described in the claims shall forfeit his lien.

Act of the Legislature, approved May 1, 1911.

Section 296.—MISTAKES IN STATEMENT NOT TO INVALIDATE LIEN.—No mistake or errors in the statement of the demand, or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets, or of the balance due, was made with the intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has since the claim was filed become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

Section 297.—LIEN LAW TO BE LIBERALLY CONSTRUED.—The provisions of this act shall be liberally construed with a view to effect its purpose. They are not intended as a re-enactment of the provisions of former statutes, with the policy heretofore impressed upon the same by the courts of this state, but are intended to reverse that policy to the extent of making the liens provided for direct, and independent of any account of indebtedness between the owner and contractor, thereby making the policy of this state conform to that of Nevada and the other Pacific Coast states.

Act of the Legislature, approved May 1, 1911.

Section 298.—SECURITY FOR PAYMENT BY CONTRACTORS ON PUBLIC WORK.—There is no lien against a public building. But the law provides, instead of a lien, certain security, by means of a bond required from every public contractor. Every contractor, person, company,

or corporation, to whom is awarded a contract for the execution or performance of any building, excavating, or other mechanical work, for this state, or by any county, city and county, city, town, or district therein, shall, before entering upon the performance of such work, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a good and sufficient bond, to be approved by such contracting body, officers or board, in a sum not less than one-half of the total amount payable by the terms of the contract; such bond shall be executed by the contractor, and at least two sureties, in an amount not less than the sum specified in the bond, and must provide that if the contractor, person, company, or corporation, fails to pay for any materials or supplies furnished for the performance of the work contracted to be done, or for any work or labor done thereon of any kind, that the sureties will pay the same, in an amount not exceeding the sum specified in the bond; provided, that such claims shall be filed as hereafter required.

(a) Filing of Claim.—Any material-man, person, company, or corporation, furnishing materials or supplies used in the performance of the work contracted to be executed or performed, or any person who performed work or labor upon the same, or any person who supplies both work and materials, and whose claim has not been paid by the contractor, company, or corporation, to whom the contract has been awarded shall, within ninety days from the time such contract is completed, file with the commissioners, managers, trustees, officers, board of supervisors, board of trustees, common council, or other body by whom such contract was awarded, a verified statement of such claims, together with a statement that the same has not been paid.

(b) Suit on Bond.—At any time within six months after the filing of such claim, the person, company or corporation filing the same may commence an action against the sureties on the bond.

Act of the Legislature, approved May 1, 1911.

Section 299.—BUILDING CONSTRUCTED UNDER DISTINCT CONTRACTS—WHO IS ORIGINAL CONTRACTOR.—Where a building is constructed under distinct contracts for the different departments of work involved, each person contracted with is an original contractor, and can file his claim of lien within sixty days after the completion of his contract, irrespective of the time when the entire building is completed. The provisions of the Code relating to mechanics' liens do not contemplate that there can be no original contractor except for the entire work of constructing the building. For the purpose of constructing the building, the owner may enter into different original contracts, for the different departments of work involved. If the owner should enter into a contract with one person for the construction of a building in all its parts, except the painting, and should afterwards enter into a contract with another person to do the painting of the building, each of these individuals would be an original contractor, within the meaning of the law.

Section 300.—ATTORNEY'S FEES.—The court cannot allow, in suits to foreclose mechanics' liens, any attorney's fees to any lien claimant. The law until recently had been for many years that a person foreclosing a mechanics' lien would be allowed reasonable attorney's fees, in both the Superior and Supreme Courts; but the Supreme Court of California rendered a decision, in a suit brought to foreclose a mechanics' lien, declaring the law allowing an attorney's fee unconstitutional and void. In San Francisco, the Builders' Supply Depot foreclosed a lien for materials and labor furnished in the construction of a building. The Superior Court allowed the plaintiff attorney's fees and included such fees in the judgment. The defendants appealed the case to the Supreme Court, and this court decided that attorney's fees could not be allowed, and that the law giving such fees was void. The court says: "The court allowed an attorney's fee in each of the cases, and appellants contend that such allowance was erroneous because the statutory provision

directing the allowance of such a fee is unconstitutional and void. In our opinion this contention must be sustained. In a few instances this court has affirmed judgment for plaintiff's in mechanics' lien cases which included attorney's fees; but our attention has not been called to any case where the question of the constitutionality of the statute providing for such fees has been raised, or presented to the court for adjudication. In the case at bar the question has been for the first time raised." The court decided that the expense of filing the liens may be allowed as costs of suit, but that no attorney fee can be lawfully claimed or allowed. (Decided by the Supreme Court of California in the case of Builders' Supply Depot vs. Dennis O'Conner, which decision is printed in Volume 33, California Decisions, page 97.)

Section 301.—WHEN LIEN FOR MATERIALS BEGINS.—A lien for the furnishing of materials relates to the date of beginning to furnish them, and includes all the materials thereafter furnished for the building; and such lien has priority over a mortgage executed after the date of the commencement to furnish the materials.

Section 302.—LIEN FOR MOVING A HOUSE.—Under the law, a contractor performing labor upon a house, by moving it from one place to another, is entitled to a lien thereon.

Section 303.—LIEN ON HOMESTEAD.—A mechanic's lien may be created on a homestead without the joint action of husband and wife. A homestead is free from forced sale, except as provided by the statute. Among the cases in which a homestead may be sold under execution, precisely as though it was not a homestead, are those under judgments obtained upon debts secured by liens of "mechanics, contractors, artisans, architects, builders, laborers of every class, and material-men."

Section 304.—LIEN AGAINST RAILROAD.—A lien may be filed against a railroad, and where a railroad lies in two counties, it is not necessary to file the lien in both counties. It is sufficient if the lien is filed in one of the counties only through which the railroad runs.

Section 305.—ABANDONMENT AND NEW CONTRACT.—Where a building contract is abandoned, it is immaterial whether the building is subsequently completed by the owner or not; and a subsequent contract by the owner for the completion of the work is as disconnected with the original contract as if it were for the construction of a different building.

Section 306.—WHAT IS MEANT BY "OWNER."—When the law requires the claim of lien filed in the recorder's office to state "the name of the owner or reputed owner, if known," it means the name of the person who is the owner at the time the claim is filed. The law does not refer to the owner with whom the contract for the improvement was made, or to the owner at any other time than at the date of filing the claim. The object of requiring the claim to be filed in order to perfect the lien is to give notice of the lien to those interested in the property upon which it is claimed; and, as the owner at the time of filing the claim is the party to be affected by it, rather than one who has parted with the property subsequent to the making of the original contract, it is reasonable to suppose that the Legislature intended the name of the owner at the time the claim is filed, rather than that of any previous owner.

Section 307.—REAL OR REPUTED OWNER.—It was not the intention of the Legislature that in the claim of lien filed for record the claimant must state the name of the real owner, at the risk of losing his lien if it shall turn out that he was in error. The provision of the law that the claimant shall give the "name of the owner, or reputed owner, if known," implies that, if he does not know the name of

the owner, he may state this fact, and perfect his lien without naming an owner; and also that, if in good faith he gives the name of a reputed owner, he will not lose his lien if it afterwards appears that some other person was the owner.

Section 308.—PRIORITY OF MATERIAL-MAN'S CLAIM OVER MORTGAGE.—The lien of a material-man for lumber furnished for a dwelling will take precedence of a mortgage on the land executed immediately upon a conveyance thereof, but after the time when the materials were commenced to be furnished, notwithstanding the mortgage was given for the purchase price of the land.

Section 309.—DWELLING-HOUSE—LAND SUBJECT TO LIEN.—Only so much of the land around a dwelling-house is subject to lien as may be necessary for the convenient use and occupation of the house. So, where a house was situated on a forty-acre tract, the Supreme Court has said that the whole tract was not subject to the lien. The statute does not contemplate anything of that kind. It means exactly what it says—a sufficient space around the dwelling for its convenient use and occupation. It does not contemplate that sufficient land around the dwelling-house to support the owner while living there be set apart. Neither the productiveness or non-productiveness of the soil, nor the profit derived from the cultivation of the land, is a material element to be considered in determining the amount of land to be set apart with the dwelling-house. The statute simply allows the dwelling-house and a quantity of land around it sufficient for its convenient use, as the subject of a lien.

Section 310.—ELEVATOR PART OF BUILDING.—Where the original plans for a large building provided for an elevator, and the contract for the construction of the elevator was let when contracts for other work were let, the elevator was a substantial part of the building, and the building was not completed, so that the limitations for filing mechanics' liens would run, until it was finished. An elevator

was called for by the original plans and specifications. A contract was let for its construction at the same time that other contracts were let. It was attached to the building, and formed an integral part of it. The fact that the building might have been used without it, and that it was a convenience merely, is immaterial. Conceding an elevator to be a mere convenience—still conveniences are a material part of the building, when provided for by the plans and specifications; and, so provided for, the building is not completed until the demands of the plans and specifications in this regard have been satisfied.

Section 311.—MATERIALS MUST BE EXPRESSLY FURNISHED FOR STRUCTURE CHARGED WITH LIEN.—In order to enforce the lien of a material-man against a building or structure, the materials must not only have been used in the construction of the building, but they must have been, by the express terms of the contract, furnished for the particular building on which the lien is claimed.

Section 312.—ASSIGNMENT OF MECHANIC'S LIEN.—A mechanic's lien can be assigned, after the claim of lien has been filed for record, but not before. Before the claim of lien has been filed for record, the right to the lien is a mere personal privilege, which the laborer, mechanic, or material-man may exercise or not, as he sees fit; hence it is not the subject of assignment. But after the claim of lien has been filed for record, it can be assigned, and the assignee will have all the rights of the original holder of the lien.

Section 313.—IF BUILDING IS DESTROYED BY FIRE, NO LIEN CAN AFTERWARDS BE FILED.—Where a building in course of construction is destroyed by fire, without any fault of the owner, before any mechanic's lien has been filed thereon, the party who furnished materials for the building, or who performed labor upon it, can have no lien upon the land upon which the building was being

constructed. The benefit conferred upon the owner, by placing the labor and materials in his building, is the true consideration in law for conferring the right of lien upon the parties furnishing such labor and materials. It cannot be said that this consideration exists, where the building is destroyed before completion and before delivery to the owner. In such case, the owner has not derived and can never derive any benefit from the labor and materials furnished. (Decided by the Supreme Court of California in the case of Humboldt Lumber Mill Company vs. Edward Crisp, which decision is printed in Volume 29, California Decisions, page 629.)

Section 314.—LIEN FOR WORK DONE BY ORDER OF HEALTH OFFICER.—A law passed in 1909 provides as follows:

“Any health officer or governing board of any city, town or sanitary district, having served written notice upon the owner or reputed owner of real estate upon which there is a dwelling house, and such owner or reputed owner, after thirty days, having refused, neglected or failed to connect such dwelling house, together with all toilets, sinks, and other plumbing therein, properly vented, and in a sanitary manner, with the adjoining street sewer, may construct the same at a reasonable cost, and the person doing said work at the request of such health officer or governing board has a lien upon said real estate for his work done and materials furnished.”

Act of the Legislature, approved April 19, 1909.

Section 315.—MINER'S LIEN MUST BE UPON THE WHOLE CLAIM.—A mechanic's lien cannot be claimed upon part of a structure, or upon a structure which is part of a larger structure, or upon part of an entire property. Therefore, it has been held by the Supreme Court of California that a claim of lien for materials furnished for the construction of a mill, tramway, boarding-house, or reduction works upon a mining claim, should be against the mining claim, and not against the specific structure

upon the mine. One contributing labor or materials to a structure which is an appurtenance to a mine, or which, when constructed, is to form part of it, must be held to have anticipated its future use, and cannot claim a lien upon the structure alone. And the procedures provided for acquiring liens upon structures are not, in all respects, applicable to those claiming liens upon mining claims. They cannot all date back to the commencement of the work. On a mine the work is always going on, may have commenced before the laborers were born, and may continue indefinitely. There is no special thirty days, therefore, within which mining lienors must record their notices and claims of lien. The labor cannot generally be said to have contributed to the creation of the property, or added to its value; on the contrary, it may diminish its value—perhaps render it valueless. The Code does not seem to have provided for all the cases which may arise in regard to liens upon mining claims. We can only follow the procedure so far as applicable. For that purpose, the mining claim must stand in the place of the “structure” as the property to be charged with the lien. It is the property which should be described in the notice and claim of lien. One who has built a chimney in a house, or a porch, or a door-step, has helped to build a structure; but he cannot acquire a lien upon these specific structures, and by detached sales destroy the value of the claims depending upon liens upon the whole house. A structure may be a part of another larger structure, and in reference to it constitute but a part of a structure. In such cases it is well settled the lien must cover the entire structure. The mining lien, if it exists at all, extends to the whole claim. Strictly speaking, of course, a mining claim cannot be constructed, altered, or repaired. The intention of the lawmakers seems to have been to give a lien upon the whole claim, for labor performed on and for materials furnished for and used in any structure, on or in the mining claim. The lien given by the statute is upon the mining claim as a whole, and not upon the separate pieces of work done in its repairs. A claim of lien for material furnished, to be used in a building upon a mining claim,

should be against the mining claim, and not against the specific structure upon the mine.

Section 316.—MINING GROUND — PATENTED LAND.—A lien for work and labor may be taken upon mining ground owned by a patentee of the United States. The words “mining claim” in the statute include “mining ground” and all “mines,” whether the title is perfect or not. But the lien will not extend to adjacent land which is not mineral in its character. The words “mining claim,” as used in the law, have no reference to the different stages in the acquisition of the Government title. It includes all mines where no patent has been issued, as in the case of a mining claim in its strict sense, and also where the patent has issued.

Section 317.—PERSONAL PROPERTY LIENS.—Every person who, while lawfully in possession of an article of personal property renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, and may retain possession of the same until the charges are paid; and livery or boarding or feed stable proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing such horses or stock; and laundry proprietors and persons conducting a laundry business, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work; and veterinary proprietors and veterinary surgeons, shall have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals; and

keepers of garages for automobiles, shall have a lien, dependent on possession, for their compensation in caring for and safe keeping such automobiles.

Act of the Legislature, approved April 12, 1911.

Section 318.—FORM OF CONTRACTOR'S BOND.

—The following is a form of bond to be given by the contractor to the owner, and to be filed for record together with the contract:

CONTRACTOR'S BOND.

KNOW ALL MEN BY THESE PRESENTS: That we,
 , as principal,
 (Here insert name of contractor.)
 and
 (Here insert name of surety.)
 and
 (Here insert name of surety.)
 as sureties, are held and firmly bound unto.....

 (Here insert name of owner.)
 in the sum of.....
 (Here insert an amount not less than fifty percent of contract price.)

 Dollars, lawful money of the United States of America, to be paid to the said.....
 (Here insert name of owner.)
 for which payment well and truly to be made, we bind ourselves firmly by these presents.
 Sealed with our seals and dated the.....day of....., 191...
 The conditions of the above obligation are such, that whereas, the said
 (Name of contractor.)
 did on the.....day of....., 191...
 enter into a contract with the said.....

 (Name of owner.)
 by the terms of which he agreed to.....

(Here state the substance of the contract, time of payments, amounts, progress of work and completion, etc.)

the said contract shall be performed in all respects by said contractor as specified therein.

It is also a condition of this bond that the said.....

(Name of contractor.)

shall pay in full the claims of all persons performing labor upon or furnishing materials to be used in the work specified in said contract; and this bond shall inure to the benefit of any and all persons who perform labor upon or furnish materials to be used in the work described in said contract, and they and each of them shall have a right of action to recover upon this bond and the sureties named herein, in any lawful suit brought to foreclose a mechanic's lien by such persons or in a separate suit brought on this bond; and if these conditions above stated are fulfilled and fully complied with, then the above obligation to be void, otherwise to remain in full force and virtue.

.....(Seal.)
(Seal.)
(Seal.)

(Acknowledgment in usual form.)

Section 319.—FORM OF NOTICE OF AGREEMENT TO FURNISH MATERIALS TO CONTRACTOR.—

To
 (Here insert name of owner.)

Please take notice that in the month of....., 191..., I, the undersigned, agreed with.....
 (Here insert name of contractor.)

the contractor with whom you contracted to construct the building at.....Street, San Francisco, California (of which building you are the reputed owner), to supply him with.....

(Here describe the materials which were agreed to be supplied.)

to be used in constructing said building. That the value of said materials, agreed to be supplied as aforesaid, is the sum of \$.....

Section 320.—FORM OF NOTICE TO OWNER OF MATERIALS FURNISHED TO CONTRACTOR.—

The following is a form of notice to owner of materials furnished to the contractor. This notice may be given by delivering it to the owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, or by leaving it at the architect's office with some person in charge there:

To
(Here insert name of owner.)

Please take notice that in the month of....., 191..., I, the undersigned sold and delivered at his request

(Here insert name of contractor.)

the contractor who was at that time constructing that certain building at number.....Mission Street, San Francisco, California (of which building you are the reputed owner), all the materials described as follows, to-wit:

(Here insert description of materials.)

.....
.....
to be used and which material was used by said contractor in constructing said building. And that the value of said materials is \$....., and is and was the value of said materials agreed to be furnished to said contractor by me. That the first delivery of said materials to said contractor for use in said building was on the.....day of....., 191..., and the last lot of said materials was delivered on the..... day of....., 191....

Section 321.—FORM OF NOTICE TO OWNER OF LABOR PERFORMED.—The following is a form of notice to owner to be given by the person having performed

labor upon the building at the instance of the contractor. This notice may be given by delivering it to the owner personally, or by leaving it at his residence or place of business with some person in charge, or by delivering it to his architect, or by leaving it at the latter's office with some person in charge there:

To
(Here insert name of owner.)

Please take notice that between the.....day of....., 191.., and the.....day of....., 191.., I, the undersigned, performed labor for.....

.....
(Here insert name of contractor.)
the contractor with whom you agreed to construct that building at number.....Mission Street, San Francisco, California (of which building you are the reputed owner), to-wit:

(Here insert the kind of labor performed in the construction of said building.)

.....
and he agreed to pay me \$......for each day's work ofhours. That I worked on said building under said agreement.....days. That the said....., the contractor, has not paid me anything on account of said work. (Or if anything has been paid, state how much.).....

.....
And he is, at this date indebted to me in the sum of \$......lawful money of the United States, and the value of said work was and is \$......per day for each of said.....days, amounting to the sum of \$.....

Dated the.....day of....., 191...

Section 322.—FORM OF NOTICE OF MECHANIC'S LIEN FOR LABOR.—The following is a form of notice of mechanic's lien for labor performed. The notice of lien must be filed for record with the county recorder of the county or city and county in which the property or some part thereof is situated:

NOTICE OF MECHANIC'S LIEN FOR LABOR.

.....
Claimant

vs.

.....
Notice is hereby given that.....
residing at....., State of California,
hereby claims a lien against the interest of.....

.....in the real property hereinafter described.

That the name of the owner of said real property, against
whose interest therein a lien is hereby claimed, is.....

.....
(Here insert name of owner.)

and that the interest of said.....
in said real property, as far as known to said lienor, is as
follows, to-wit:

.....
(Here state nature of interest of owner in the property.)

.....
That the name of the claimant herein is.....
and his residence is at....., State of California;
That claimant was employed by.....

(Here state name of employer.)

on the.....day of....., 191.., to perform
labor in and about the construction of a building on the
premises hereinafter described, and commenced work on said
building as a.....on the.....day of
....., 191.., and performed.....days of
labor as such....., ending on the.....day of
....., 191.., at the agreed price of \$.....
per day;

That the amount unpaid to the said claimant for such labor
is the sum of \$.....;

That the property subject to this lien, and against which
the said.....hereby claims a
lien, is described as follows, to-wit:

All that certain lot or tract of land situate in the City of
....., County of....., State of
California, particularly described as follows: (If in a city or
village, describe the location by street and number if known.)

.....
(Here describe the property.)

.....
Claimant.

STATE OF CALIFORNIA, }
 County of } ss.

....., being duly sworn,
 deposes and says, that he is the person named as claimant
 in the foregoing claim of lien; that he has read the foregoing
 claim of lien, and knows the contents thereof, and that the
 statements therein contained are true of his own knowledge.

.....
 Subscribed and sworn to before me this.....day of
, 191...

.....
 Notary Public in and for the County of
, State of California.

**Section 323.—FORM OF MECHANIC'S LIEN BY
 CONTRACTOR OR SUB-CONTRACTOR.**—The follow-
 ing is a form of notice of mechanic's lien by contractor or
 sub-contractor. The notice of lien must be filed for record
 with the county recorder of the county or city and county
 where the property or some part thereof is situated:

**NOTICE OF MECHANIC'S LIEN BY CONTRACTOR
 OR SUB-CONTRACTOR.**

.....
 Claimant.

vs.

.....
 Notice is hereby given that.....
 residing at....., State of California,
 hereby claims a lien against the interest of.....

.....in the real property hereinafter described:

That the name of the owner of said real property, against
 whose interest therein a lien is hereby claimed is.....

.....and that the interest of
 said

in said real property, as far as known to said lienor, is as
 follows, to-wit:

.....
 (Here describe nature of interest of owner in the property.)

.....
 That the name of the claimant herein is.....
, and his residence is at
, State of California.

That on the.....day of....., 191..., claimant entered into a contract with..... to

(Here describe work contracted for.)

.....
for the agreed price of \$....., payable as follows, to-wit:

(Here state terms of payment.)

.....
That claimant completed his said contract on the..... day of....., 191...;

That the amount unpaid to the said claimant on said contract is the sum of \$.....;

That the property subject to this lien and against which the said hereby claims a lien, is described as follows, to-wit:

All that certain lot or tract of land situate in the City of County of State of California, particularly described as follows:

.....
(Here describe the property. If in a city or village, describe the location by street and number, if known.)

.....
That the said claimant, hereby claims a lien on the property above described for the sum of \$.....

.....
Claimant.

STATE OF CALIFORNIA, }
County of } ss.

....., being duly sworn, deposes and says, that he is the person named as claimant in the foregoing claim of lien; that he has read the foregoing claim of lien, and knows the contents thereof, and that the statements therein contained are true of his own knowledge.

.....
Subscribed and sworn to before me this.....day of , 191...

.....
Notary Public in and for the County of State of California.

Section 324.—FORM OF NOTICE OF CLAIM AGAINST PUBLIC IMPROVEMENT FUND.—The

law does not allow a lien on public property, property owned by the state or a municipality. But the law does allow a claim on public funds appropriated to certain public improvements, and makes it the duty of the state or municipal officer in charge of said public improvement to withhold from the contractor sufficient money due or that may become due to such contractor to answer the claim, including the reasonable cost of any litigation thereunder. This notice may be given by delivering the same personally to the officer of the municipality whose duty it is to pay the contractor from the public funds:

NOTICE OF CLAIM AGAINST PUBLIC IMPROVEMENT FUND.

Notice is hereby given that....., residing at....., State of California, hereby claims a lien against the interest of....., contractor, in that certain fund appropriated and set apart by the City and County of San Francisco, in the State of California, to pay said contractor for public work, as follows:

That the name of claimant is....., and his residence is at....., State of California.

That on the.....day of....., 191..,

(Here insert name of contractor.)

entered into a contract with the said City and County of San Francisco to

(Here state nature of work contracted for.)

That between the.....day of....., 191.., claimant furnished materials to said contractor to be used in the construction of said public work, and that the first materials were delivered to said contractor by him on theday of....., 191.., and the last materials were delivered on the.....day of....., 191..,

That the materials so furnished consisted of.....

(Here insert description of materials.)

and which said materials were used in the construction of

 (Here describe the public improvement.)

at....., in the said City and County of
 San Francisco.

That said materials were of the reasonable value (or agreed
 price) of.....dollars.

That the amount unpaid to said claimant from said con-
 tractor for said materials is the sum of.....dollars,
 which said sum of.....dollars became due to said
 claimant on the.....day of....., 191...

That said
 hereby claims a lien on all moneys due or to become due the
 said
 on said contract with said City of San Francisco for the
 sum of.....dollars.

.....
 Claimant.

STATE OF CALIFORNIA, }
 County of} ss.

....., being duly sworn,
 deposes and says, that he is the person named as claimant
 in the foregoing claim of lien; that he has read the foregoing
 claim of lien, and knows the contents thereof, and that the
 statements therein contained are true of his own knowledge.

Subscribed and sworn to before me this.....day of
, 191...

.....
 Notary Public in and for the County of
, State of California.

Section 325.—OWNER'S NOTICE OF COMPLETION.—The owner may, within ten days after completion of any contract, or within forty days after cessation from labor thereon, file for record in the office of the county recorder of the county where the property is situated a notice of completion, in accordance with the law stated in section 296. The following is a form of owner's notice of completion:

NOTICE OF COMPLETION OF WORK.

Notice is hereby given that I,.....
(Here insert name of owner.)

.....
as owner of the property herein described, caused a building
to be erected upon the property hereinafter described, the
contract for doing which work was heretofore made with
.....

(Here insert name of contractor.)

and which contract was filed for record in the office of
the Recorder of the City and County of San Francisco, State
of California, on the.....day of....., 191...

That the work on said building was completed on the
.....day of....., 191...

That the nature of the title to said property of said owner
is as follows, that is to say, he owns it in fee.

That the property hereinbefore referred to, and on which
said building is situated, is described as follows, to-wit:

.....
.....
.....
(Here insert description of property.)
.....
.....
.....

STATE OF CALIFORNIA, }
City and County of San Francisco } ss.

....., being duly sworn,
deposes and says, that he is the owner of the property de-
scribed in the foregoing notice; that he has read the same
and knows the contents thereof, and that the same is true
of his own knowledge.

.....
Subscribed and sworn to before me this.....
day of....., 191...

.....
Notary Public in and for the City and County
of San Francisco, State of California.

**Section 326.—NOTICE OF OWNER THAT HE
WILL NOT BE RESPONSIBLE FOR IMPROVE-
MENTS ON HIS PREMISES.**—The owner of property,
or persons having or claiming any estate in the land upon
which improvements are being made or buildings constructed,

may within ten days after he shall have obtained knowledge of said construction, labor or repair or work or labor, give notice that he will not be responsible for the same, in accordance with the law stated in section 298, and this notice must be posted and recorded in the manner stated in section 298. The following is a form of notice by owner that he will not be responsible:

To Whomsoever It May Concern:

Notice is given that I am the owner of all that property described as follows:

(Here insert description of property.)

and I hereby give notice that I will not be responsible for the construction, or for the material or labor, used or to be used, or for any alteration or repair, or for any work, labor, material furnished or to be furnished upon that structure, or addition thereof, now upon said land, or which has been performed, furnished or used in any manner or way upon said land or upon the buildings thereon, or additions thereto, or which may heretofore be performed, furnished or used, upon said land or buildings or additions thereto, or for the services of any architect.

Dated the.....day of....., 191...

STATE OF CALIFORNIA, }
City and County of San Francisco} ss.

....., being duly sworn,

(Here insert name of owner.)

deposes and says, that he is the owner of the property described in the foregoing notice; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

Subscribed and sworn to before me this.....
day of....., 191...

Notary Public in and for the City and County
of San Francisco, State of California.

Section 327.—FORM OF ASSIGNMENT OF LIEN.

—It has already been stated that a mechanic's lien can be assigned, after it is filed for record, but not before. The following is a form of assignment of lien.

ASSIGNMENT OF LIEN.

THIS INDENTURE, made the.....day of
....., 191.., witnesseth:

That, residing
at....., State of California, hereby assigns
for valuable consideration to.....,
residing at....., State of California,
that certain lien and all moneys due or to become due thereon,
amounting at the date of filing notice of lien to the sum of
.....dollars, which said notice of lien was
filed in the office of the clerk of.....County,
State of California, on the.....day of....., 191..;
in which said notice of lien the said.....
was named as lienor and.....
as owner, and the real property therein mentioned as the
subject of said lien particularly described as follows, to-wit:

(Here describe the property.)

In witness whereof, I have hereunto set my hand and seal
the day and year first above written.

.....(Seal.)

STATE OF CALIFORNIA, }
County of..... } ss.

On this.....day of....., 191.., before me
personally appeared,
to me known to be the person described in the foregoing
instrument, and acknowledged that he executed the same.

.....
Notary Public in and for the County of
....., State of California.

Architects

Section 328.—COMPENSATION OF ARCHITECT.

—The compensation of an architect who draws plans and specifications is left to an agreement between himself and his employer. But if there is no agreement as to what is to be paid for the architect's work, the law will allow him a reasonable compensation for his services. What is a reasonable compensation will depend upon the character of the work he has done, and will be determined by the knowledge and experience of persons skilled in that kind of work. Custom may also enter into the question of the architect's compensation, as where he has superintended the construction of the building, and it is the local custom to pay architects so much for such service; in which case it will be presumed that his services of like character were worth the customary compensation, unless some fact is shown which makes these services worth more or less than the customary rate.

Section 329.—ARCHITECT'S LIEN.—An architect has a lien on the building for his pay, provided he superintends the erection of the building. He must, to enforce his lien, file the same claim of lien in the office of the County Recorder as is required of laborers, mechanics, and materialmen, referred to in preceding sections.

Code of Civil Procedure, Section 1183.

Section 330.—ARCHITECT CANNOT FILE LIEN AGAINST PUBLIC BUILDING.

—If an architect prepares plans and specifications for a public building, such as a Court House, Jail, City Hall, Hall of Records, or School House, he cannot file a lien against any such property, and he must look only to the public funds provided by law for such public improvements. Justice Temple, in the Supreme Court of California, in the case of Mayrhofer against the Board of Education of San Diego, in which case it was decided that in California no lien will be allowed against a

public building, stated the reason thus: "The claim is made that public buildings are included both in the word 'property,' used in the Constitution, and in the phrase 'any building,' used in the Code, and therefore it must necessarily follow that mechanics and material-men are, by these provisions, given a right to a lien upon such buildings. But this ignores the rule of statutory construction, that the State is not bound by general words in a statute, which would operate to trench upon its sovereign rights, injuriously affect its capacity to perform its functions, or establish a right of action against it. The Government was created and shaped by the Constitution. It is not an end in itself, but a mere instrumentality for public services. Its powers and functions exist only for the people. One of its functions is to enact laws for the government of the inhabitants within its limits, thereby affording them protection and advancing their general welfare. The property it holds is simply to enable it to perform the services required of it. It is as much devoted to public use as are the streets and highways, though in a different way. Instead of being the natural and obvious conclusion, that a general law providing remedies for private individuals was intended to enable a creditor of the State to seize this property for the satisfaction of his debt, it would be a most unnatural inference. The Constitution has itself provided, as the only means which the State has for the payment of its debts, the exercise of the sovereign power of taxation. And for each political subdivision the rule is the same. These revenues are divided into specific funds, and one furnishing labor or material to the State knows to what he must look for payment. He becomes a creditor of a specific fund, and has no right except with reference to such fund." (Decided by the Supreme Court of California in the case of *Mayrhofer vs. Board of Education of San Diego*, which decision is printed in Volume 89 of the California Reports, page 110.)

Section 331.—ARCHITECT HAS NO LIEN AGAINST MONUMENT IN PUBLIC PARK.—Where an architect is employed by a contractor for the erection of a monument

in a public park, he has no lien for his pay upon the monument or the land on which it is erected. This question was decided by our Supreme Court in the matter of the Garfield Monument, in Golden Gate Park, San Francisco. The Supreme Court said: "The monument, though built by private contribution, was erected upon and as an adornment of one of the public parks of the municipality. It was affixed to the freehold, and thus became a part of the land, the property of the municipality. The monument could not be made subject to a lien." (Decided by the Supreme Court of California in the case of Griffith vs. Happersberger, which decision is printed in Volume 86 of the California Reports, page 605.)

Section 332.—PAYMENTS MADE ON ARCHITECT'S CERTIFICATE.—Where a contract provides that payments shall be made on the certificate of the architect—who is required by the contract, among other things, to certify that all the work of the mechanics, laborers, and others employed by the original contractor, has been paid—his certificate is conclusive of the rights of all parties concerned, unless it can be shown that it was obtained by the owner by collusion or fraud.

Section 333.—ARCHITECT'S CERTIFICATE AS TO LIENS.—Where a building contract provides that for each of the payments a certificate shall be obtained from the architect, and that at the time of the presentation of any certificate there shall not be any liens against the building, and a lien is filed before the last installment, it does not become due while such condition exists; and the amount of the lien must be deducted from the amount due the contractor.

Section 334.—CONDITION AS TO CERTIFICATE MAY BE WAIVED BY OWNER.—The condition in a contract for the erection of a building, that all installments of payments shall be made upon certificates of the architect that the materials and labor have been furnished in accordance

with the plans and specifications, may be waived by the owner. The clause as to the production of the certificates is for the benefit of the owner, and he may waive it at his option, and accept other proofs.

Section 335.—ARCHITECT'S PLANS PART OF CONTRACT.—When the contract mentions the architect's drawings and specifications, and refers to them for conditions of the agreement, they form an essential part of the building contract, and should be annexed to the contract before filing. The plans and specifications cannot be left in the architect's office, and at the same time be considered as annexed to the contract. If intended to co-operate with and be incorporated into the formal contract, the drawing and specifications must be in fact attached to the contract.

Section 336. — SERVICES OF ARCHITECT.—The services of an architect, in the preparation of drawings, plans, and specifications for a building and in superintending its erection are "work and labor upon a building," within the meaning of the mechanic's lien law. The architect who superintends the construction of a building performs labor as truly as the carpenter who frames it, or the mason who lays the wall, and labor of a most important character. The language quoted makes no distinction between skilled and unskilled labor, or between mere manual labor and the labor of one who supervises, directs, and applies the labor of others. The general principle upon which the lien laws proceed is, that any person who has contributed by his labor or by furnishing materials, to a structure erected by an owner upon his premises, shall have a claim upon the property for his compensation. An architect who prepares the drawings, plans, and specifications for a building, and superintends its erection, may as truly be said to perform labor on it as any one who takes part in the work of construction.

Section 337.—LIABILITY OF ARCHITECT FOR NEGLIGENCE.—An architect must perform his services with diligence and ordinary care. If by his negligence long delay occurs in finishing drawings, plans, and specifications which he has agreed to furnish, and the other party is damaged by the delay, he is liable for the loss. Or if, as superintendent he neglects his duty, to the detriment of his employer, he is also liable to him in damages. The architect is bound to devote to his employer the skill and energy he possesses, and will be liable in damages for any failure in this respect.

Section 338.—CONTRACT FOR PERCENTAGE ON COST OF BUILDING.—Under a contract with an architect to furnish the necessary drawings, specifications, and details for the construction of a building, for a certain percentage of the total cost of the construction of the building, the architect, after furnishing the drawings, etc., in case his employment is terminated before the completion of the building, is entitled to the agreed commission on the total cost of the building. This was determined by our Supreme Court, in a case where Charles I. Havens sued Annie Donahue, at San Francisco, for a commission of two and a half per cent upon the total cost of the building, according to his contract with Mrs. Donahue. He was paid a portion of the commission, but his employment was terminated before the building was completed, and he sued to recover the balance. Mrs. Donahue contended that Havens was only entitled to recover his commission upon the cost of construction so far as the building had proceeded at the time his employment was terminated. The Supreme Court decided that the architect in question had nothing to do with the construction of the building. His contract was simply to furnish the plans, drawings, and specifications, and this he did. (Decided by the Supreme Court of California in the case of Havens vs. Donahue, which decision is printed in Volume 111 of the California Reports, page 297.)

Section 339.—LIABILITY FOR DISCLOSING INTENTION OF OWNER.—An architect employed to furnish plans for the erection of a building on a site on which there is another building, occupied by tenants, is not liable to the owner, by telling people of the intended erection of the new building—the architect having neither contracted nor been requested to keep such a fact secret—for the loss of rent caused by the vacation of the building by the tenants.

Section 340.—TIME SPENT ON PLANS AND SPECIFICATIONS.—Where an architect is compelled to sue for his compensation, and there is no agreement fixing the amount of his pay, he may prove the reasonable value of his services. And evidence as to the length of time spent by an architect on certain plans and specifications is admissible on the question of the value of his services in preparing them, the jury not being limited to a consideration of the expert testimony on that question.

Section 341.—CERTIFICATE AND LICENSE OF ARCHITECT.—It is unlawful and a misdemeanor, punishable by fine of not less than fifty dollars nor more than five hundred dollars, for any person to practice architecture without a certificate in this state, or to advertise, or put out any sign or card, or other device which might indicate to the public that he was an architect; provided, that nothing in this act shall prevent any person from making plans for his own buildings, nor furnishing plans or other data for buildings for other persons, provided the person so furnishing such plans or data shall fully inform the person for whom such plans or data are furnished, that he, the person furnishing such plans, is not a certified architect; provided, that nothing in this act shall prevent the employment of an architect residing out of the state of California to prepare plans and specifications for buildings or other structures within the state, conditioned he shall present satisfactory evidence to the board of the district in which the structure is to be erected that he is a competent architect, when such

board shall issue to such architect a temporary certificate for such employment, upon the payment of a fee of five dollars. Architects' certificates issued in accordance with the provisions of this act shall remain in full force until revoked for cause, as hereinafter provided for in this act. A certificate may be revoked for dishonest practices, or for gross incompetency in the practice of the profession, which questions shall be determined by the district board of architecture of the district in which the person whose certificate is called in question shall reside, or shall be doing business; and upon a full investigation of the charges by the district board, an opportunity having been given the accused to be heard in his own defense or by counsel; and upon the verdict of at least four members of the district board, the board may issue its certificate to the secretary of state revoking the certificate of the person accused; and the secretary of state shall thereupon cancel such certificate. And on the cancellation of such certificate, it shall be the duty of the secretary of the district board to give notice of such cancellation to the county recorder of each county in this state, whereupon the recorder shall mark the certificate recorded in his office "Cancelled."

After the expiration of six months the person whose certificate was revoked may have a new certificate issued to him by the secretary of state upon the certificate of the district board by which the certificate was revoked.

Every certificated architect shall have a seal, the impression of which must contain the name of the architect, his place of business, and the words "Certificated architect," with which he may stamp all plans prepared by him.

Each regularly certificated architect shall pay an annual license fee of five dollars, said fee to be paid to the secretary of the board of the district of which he shall be a resident, and shall be payable in advance on January 1, and shall become delinquent the first day of April, of each year, after which date it shall be delinquent; and the certificate of such architects who shall fail to pay their license fees by April 1 of each year, shall be subject to cancellation by said district

board, and notice of such cancellation shall be sent to each county recorder of the state of California and to the secretary of state, for cancellation of certificates. And the secretary of the said district shall issue a receipt signed by the president and secretary of the district, and under the seal of the district board, to each architect paying said license fee, showing that said certificated architect has paid his annual license fee, which license receipt shall be displayed in a prominent place in the office of said architect. The fees so collected shall be used to meet the expenses of the state board of architecture.

General Laws of California, page 30.

Liens for Salaries and Wages.

Section 342.—PREFERRED CLAIMS FOR SALARY AND WAGES.—The law of California provides for certain liens for salary and wages, which do not come in the class of mechanics' liens, because including other persons in other occupations. In all assignments for the benefit of creditors, or in proceedings for insolvency, the wages and salaries of miners, mechanics, salesmen, servants, clerks, or laborers, are preferred claims. It must appear that the services were rendered or work done within the previous sixty days. These claims will be preferred to the amount of one hundred dollars each, and must be paid before any other creditors of the person who makes the assignment.

Code of Civil Procedure, Section 1204.

Section 343.—PREFERRED CLAIMS FOR WAGES AND SALARIES AGAINST ESTATES.—In case of the death of any employer, the wages of each miner, mechanic, salesman, clerk, servant, or laborer, who has rendered services or performed work within the sixty days next preceding the death of the employer, not exceeding one hundred dollars in amount, are preferred claims against the

estate, and must be paid by the executor or administrator of the estate before any other claims, except the funeral expenses, expenses of the last sickness, expenses of administration, and family allowance.

Code of Civil Procedure, Section 1205.

Section 344.—WAGES AND SALARIES IN CASE OF ATTACHMENT AND EXECUTION.—In cases of attachments and executions (not issued in suits for wages) served on the employer of any miners, mechanics, salesmen, servants, clerks, or laborers, the latter may give notice to the creditor and the officer levying the attachment or execution of their claims for wages or salaries; the notice may be given at any time before the actual sale of the property levied on, or, in the event of a levy upon money, at any time before the transfer of such money under execution. After the notice is given, unless the claim is disputed, by the debtor or a creditor, for services rendered within the sixty days next preceding the levy of the attachment or execution, not exceeding one hundred dollars, the officer must make this payment out of the proceeds of sales of property, or out of money coming into his hands by the levy. The claim for wages or salary referred to must be sworn to by the person making the claim. If the claim as made is disputed, by the debtor or a creditor, the person presenting the claim must commence a suit on it within ten days; the officer in the meantime holding enough money to pay the claim until the determination of the suit.

Code of Civil Procedure, Section 1206.

Vendor's Lien.

Section 345.—LIEN OF SELLER OF REAL PROPERTY.—One who sells real property has a vendor's lien, independent of possession, for so much of the price as remains unpaid and unsecured. The vendor may have the

personal obligation of the buyer, but this is not a security which will defeat his vendor's lien.

Civil Code, Section 3046.

Section 346.—WHEN TRANSFER OF CONTRACT WAIVES VENDOR'S LIEN.—The seller of real estate may waive his vendor's lien for the purchase price. And where the buyer has given to the seller a written contract for payment of all or part of the price, and the seller assigns and transfers the contract to a third person, this will be considered a waiver of his vendor's lien to the extent of the sum payable under the contract. But a transfer of the contract, in trust to pay debts, and the surplus to belong to the seller, is not a waiver of the lien.

Civil Code, Section 3047.

Section 347.—EXTENT OF VENDOR'S LIEN.—A vendor's lien is valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value. If the buyer transfers the property to one who has no notice of the lien of the vendor, no notice or knowledge that any part of the price remains unpaid, and who pays a valuable consideration for the property, and acts throughout the transaction in good faith, the vendor will lose his lien. So, as to a mortgagee, where the vendee has given a mortgage on the property to one who has no notice of the real facts, and takes the mortgage in good faith and for value, the vendor cannot assert his lien against the mortgagee.

Civil Code, Section 3048.

Section 348.—LIEN OF SELLER OF PERSONAL PROPERTY.—One who sells personal property has a special lien, dependent on possession, for its price, if the property is in his possession when the price becomes payable. The lien may be enforced in the same manner as when property is pledged. That is to say, he may store the property, and sue the vendee for the price; or he may resell the property, to the

best advantage, and recover from the vendee the difference between the contract price and the price obtained on the re-sale.

Civil Code, Section 3049.

Logger's Lien.

Section 349.—LIEN FOR LABOR ON LOGS AND LUMBER.—All persons who labor at cutting, hauling, rafting, or drawing logs, or lumber, or who perform any labor in or about a logging-camp necessary for the getting out or transportation of logs or lumber, have a lien on the property for the amount due for their personal services. This lien takes precedence of all other claims, and continues for thirty days after the logs or lumber arrive at the place of destination, for sale or manufacture. If logs are rafted down a river, to a sawmill for manufacture; or if logs are hauled on a railroad, to the mill; in either case the lien of the logger continues for thirty days after the logs reach the mill.

Section 350.—CLAIM OF LIEN TO BE FILED FOR RECORD.—Within twenty days after the completion of his work, if a logger or laborer in the woods or camps desires to take advantage of the lien law, he must file for record in the office of the Recorder of the county a claim, sworn to by him, containing a statement of his demand, after deducting all just credits and offsets; the time within which the labor was done; the name of the person or persons for whom he worked; the place where the logs or timber upon which the lien is claimed are believed to be situated, and how they are marked; the name of the reputed owner; and the name of the reputed owner of the land from which the logs were cut and hauled.

Section 351.—WHEN SUIT MUST BE COMMENCED TO FORECLOSE LIEN.—After the claim of lien has been filed, a suit to foreclose the lien must be commenced

within twenty-five days; and if this is not done, the lien will be at an end.

Section 352.—ATTACHMENT AS FURTHER SECURITY.—The law provides, that when the suit to foreclose the lien has been commenced, the logger may have the logs or timber attached as further security for the payment of any judgment he may recover in the suit. The writ of attachment is issued by the Clerk when he issues the summons, or it may be issued at any time afterwards, upon receiving an affidavit from the plaintiff showing the defendant's indebtedness to him, and that the attachment is asked for in good faith. The Sheriff will levy the attachment by taking the logs or timber into his possession, and will be bound to keep possession of the property unless the defendant gives him security to pay the judgment, if any is obtained against him in the suit. If the defendant gives the security, the Sheriff will release the property, free from the lien; for if the logger obtains good security that his claim will be paid, if he gets a judgment, this is all he needs, and the lien will no longer be necessary.

Section 353.—UNDERTAKING ON ATTACHMENT.—Before the attachment will issue, a bond will have to be filed with the Clerk, in a sum not less than two hundred dollars, for costs and damages if the defendant wins the suit.

Section 354.—EXTENT OF THE LIEN.—The logger's lien in no case extends beyond the limits of the county in which the logs or timber in controversy were cut.

Section 355.—ATTACHMENT NOT NECESSARY TO HOLD LIEN.—The attachment of the logs and timber is not necessary to hold the lien. It is at the option of the logger whether any attachment at all shall be issued, and it is only provided as additional security, and for the purpose of compelling the defendant to give a bond for the amount of the claim. The logger may file his claim of lien, and

then proceed and foreclose it, without getting out any attachment at all.

Statutes of 1877, page 747 ; Statutes of 1880, page 38 ;
Statutes of 1887, page 53.

Lien of Persons Working on Threshing Machines.

Section 356.—PERSONS ENTITLED TO THE LIEN.—Every person performing work or labor with or about any threshing-machine or engine, horse-power, wagon, or other of the appliances, while engaged in threshing, has a lien on the property to the extent of the value of his services.

Section 357.—EXTENT OF LIEN.—This lien extends for ten days after the claimant has ceased such work or labor.

Section 358.—SUIT MUST BE COMMENCED WITHIN TEN DAYS.—The lien expires unless a suit to recover the amount of the claim is commenced within ten days after the party ceases work.

Section 359.—PROCEEDS OF SALE DISTRIBUTED PRO RATA.—In any suit to enforce a lien on a threshing-machine outfit, when a judgment is obtained in favor of the plaintiff, and the property is sold, the proceeds of the sale are required by the law to be distributed pro rata to all judgment creditors who have, within ten days, begun suits to recover judgments for the amount due them for such work. The meaning of this is, that where there are a number of laborers who have filed their suits, they shall all share alike in the final disposition of the property. If the property will sell for enough to pay all in full, they will each receive full pay ; but if the proceeds of the sale are not sufficient to pay all in full, then each must lose in proportion to the amount of his claim.

Section 360.—NO NOTICE REQUIRED.—To enforce a lien upon a threshing-machine, no notice is required to be recorded, or given to anybody. The law creates the lien, without any formality, and the only thing required of the laborer is, that he shall commence suit within ten days after he quits work.

Section 361.—LIEN IS ASSIGNABLE.—The lien of laborers on or with a threshing-machine is assignable. All may assign to one person, before suit is brought, and the assignee may bring suit upon all the claims at the same time. Statutes of 1885, page 109.

Liens in Favor of Owners of Stallions, Jacks and Bulls.

Section 362. — PERSONS ENTITLED TO THE LIEN.—There had been so many complaints by owners of stallions, jacks, and bulls, kept for breeding purposes, of inability to collect their charges for services rendered, that the Legislature was induced to pass a law giving them a lien upon the animals served. This law provides that any owner or person having in charge a stallion, jack, or bull, used for propagating purposes, shall have a lien for the agreed price for the service of such stallion, jack, or bull, upon any mare or cow served for pay and upon their offspring.

Section 363.—CLAIM TO BE FILED.—A claim must be filed in the office of the County Recorder, in the county where the mare or cow is served or kept, which must contain a particular description of the mare or cow served; the date and place of serving; the name of the owner or reputed owner of the mare or cow served; a proper description, by name or otherwise, of the stallion, or jack, or bull, performing the service, and the name of the owner or person in charge of it; and the amount of the lien claimed.

Section 364.—NOTICE TO SUBSEQUENT PURCHASERS.—The claim of lien, when filed, operates as notice to subsequent purchasers and encumbrancers of the mare or cow for the term of one year from the date of the filing of the claim.

Section 365.—FALSE REPRESENTATIONS IN-VALIDATE LIEN.—Any wilfully false representations concerning the breeding or pedigree of the stallion, jack, or bull, made or published by the owner or person in charge of it, will invalidate the lien.

Section 366.—SUITS TO FORECLOSE.—Suits to foreclose these liens may be brought in any county where the mare or cow, or the offspring from such service, may be found.

Section 367.—ATTACHMENT AS SECURITY.—Plaintiff may have an attachment put on the mare or cow, or their offspring, at the time of issuing the summons, or at any time afterwards before judgment, as further security for his pay; an undertaking on attachment is required to be given, before the attachment will issue; and the Sheriff must then take into his possession the mare or cow, or offspring, and keep them pending the suit, unless the owner or person in charge of the animals gives him a bond to pay the judgment, if one should be obtained.

Statutes of 1891, page 90.

Damages for Breach of Contract.

Section 368.—MEASURE OF DAMAGES.—The measure of damages allowed by the law of this State, for the breach of an obligation arising from contract, is the amount which will compensate the injured party for all the detriment proximately caused by the breach, or which in the ordinary course of things would be likely to result.

Civil Code, Section 3300.

Section 369.—BREACH OF CONTRACT TO PAY MONEY.—The detriment caused by the breach of an obligation to pay money only is the amount due by the terms of the obligation, with interest. The holder of a note may be greatly damaged by the failure of the other party to pay it; for he may have to borrow money himself at high rates of interest; or he may be unable to borrow, and thus incur ruinous loss which might have been avoided if his debtor had paid him. Yet the law considers that to allow any damages, further than the amount due on the contract, would be to fix a measure of damages too uncertain and unreliable to meet the requirements of daily business and commercial life; and, therefore, the law has placed the measure of damages for breach of a contract for the payment of money only at the amount due by the terms of the obligation, with interest.

Civil Code, Section 3302.

Section 370.—BREACH OF WARRANTY OF TITLE.—When one sells property and warrants the title, and the title proves bad, the law allows the grantee the price paid to the grantor, if the title to the whole property is bad; or, if there proves to be no title to a part only of the property, such proportion of the price as that portion bears to the whole property; and, also, interest at seven per cent on the price paid for the time during which the grantee derived no benefit from the property, not exceeding five years.

Civil Code, Section 3304.

Section 371.—DAMAGES IN CASE OF EXCHANGE OF LANDS.—When lands are exchanged, and the title to one of the tracts fails, which in the exchange between the parties was conveyed with general warranty, a recovery may be had against the grantor of that tract for the value of the land, with interest and costs.

Section 372.—BREACH OF AGREEMENT TO CONVEY REAL PROPERTY.—The damages caused by the breach of an agreement to convey an estate in real property is

the price paid, and the expenses properly incurred in examining the title and preparing the necessary papers, with interest.

Civil Code, Section 3306.

Section 373.—BREACH OF AGREEMENT TO BUY REAL PROPERTY.—The damages caused by the breach of an agreement to buy an estate in real property is deemed to be the excess, if any, of the amount which would have been due to the seller under the contract, over the value of the property to him.

Civil Code, Section 3307.

Section 374.—BREACH OF WARRANTY OF TITLE TO PERSONAL PROPERTY.—Where the title to personal property is warranted, and there proves to be no title, the damage is the value of the property to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in a suit brought by the true owner to recover the property.

Civil Code, Section 3312.

Section 375.—DAMAGES FOR BREACH OF WARRANTY OF QUALITY OF PERSONAL PROPERTY.—Where personal property sold is warranted to be of a certain quality, and turns out not to be of that quality at all, the buyer is entitled to damages for the difference in value between what he bargained for and that which was actually delivered to him.

Section 376.—BREACH OF WARRANTY FOR SPECIAL PURPOSE.—If personal property is sold for a special purpose, as a machine designed to do certain work, and is warranted fit for that purpose, and turns out to be unfit, the buyer is entitled to damages; and his damages will be the difference between the value of the thing as it is and its value as it would have been had it been as warranted. And if the buyer, before he discovers that the property is unfit for the purpose for which it was warranted, makes an effort

in good faith to use it for that purpose, he will also be entitled to damages for his loss in trying to make use of it.

Civil Code, Section 3314.

Section 377.—DAMAGES FOR BREACH OF CARRIER'S OBLIGATIONS.—A carrier of freight, passengers, or messages, is bound to accept them when tendered to it. If it refuses, the person requiring the service, and who is thus compelled to look elsewhere to have it performed, is entitled to damages, being the difference between the rate which the first carrier had a right to charge and the rate which he was afterward compelled to pay. If a carrier of freight fails to deliver it, the law makes the carrier liable in damages, and fixes the measure of the damage at the value of the property at the place and on the day at which it should have been delivered, deducting whatever the freight charges would have been. So, if freight is lost on the way, the carrier will be liable to pay such damages. The carrier and the consignor may, however, make a valid contract limiting the liability of the carrier. While the ordinary measure of damages for breach of a carrier's obligation to deliver freight is the value of the goods at the time and place of delivery, the liability of the carrier may be limited by a special contract signed by the consignor, making the invoice price at the point of shipment the measure of damages, or otherwise limiting the carrier's liability. A carrier of freight is also liable to pay damages for delay in delivering the freight. The damages allowed will be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation in the market value of the goods.

Civil Code, Sections 3315, 3316, 3317.

Section 378.—DAMAGES FOR BREACH OF OTHER CONTRACTS.—The damages allowed for the breach of any contract must be the proximate result of the breach. The damages must not be speculative and uncertain, and they must be capable of being traced to the act complained of. For the breach of any contract, the injured party is entitled

to enough damages to make him whole again, provided the damages claimed are the proximate or natural results of the breach. The damages allowed must be such as are proximately caused by the breach, or such as in the ordinary course of things would be likely to result from it.

Partnership.

Section 379.—WHAT CONSTITUTES A PARTNERSHIP.—The Civil Code of California defines a partnership as being “the association of two or more persons for the purpose of carrying on business together, and dividing its profits between them.” This definition of partnership is not as comprehensive as many that have been adopted by eminent writers on legal subjects. Judge Story defines a partnership thus: “Partnership, often called co-partnership, is usually defined to be a voluntary contract between two or more competent persons to place their money, effects, labor, and skill, or some or all of them, in lawful commerce or business, with the understanding that there shall be a communion of the profits between them.” But whether we consider the definition of Judge Story, or the definition to be found in the Civil Code of California, first quoted, it is very evident that in all one essential thing is omitted. They state that there is to be a division of the profits, but say nothing about sharing the losses. A better definition of partnership, and one more in accord with the established conditions of modern business, might be suggested thus: Partnership is the voluntary association of two or more persons for the purpose of carrying on business together, and dividing its profits and sharing its losses between them. For there may be, and often is, a sharing of the profits of a business venture, when there is no partnership. Agents, or brokers, or commission merchants may be offered and accept a share of the profits, as an inducement to greater effort on their part, but this will not constitute them partners with their principals. There must be a community of interest in both the profits and the losses, to constitute a valid partnership.

Section 380.—FORMATION OF PARTNERSHIP.

—A partnership can be formed only by the consent of all the parties. As the voluntary consent of all the members is necessary in the formation of a partnership, it is the law that no new partner can be admitted into a partnership without the consent of every member. If one partner sells his interest in the partnership property, this will not make the purchaser a partner, without the consent of the partner who stays in the business. Neither member of a partnership can force a new member into the firm.

Section 381.—PARTNERSHIP PROPERTY.—The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired by the partnership. But while every partnership presupposes that there must be something brought into the common stock or fund by each member, it is not necessary that each should contribute or contract to contribute money, goods, effects, or other property, towards the common stock; for one may contribute labor, or skill, and another may contribute property, and another may contribute money, according as they shall agree. Sometimes it happens that each partner contributes only skill, or labor, or services, for the common benefit. But all must contribute something, and thus join together either money, or goods, or other property, or labor, or skill. Whether the partners in the first place contribute money, or real or personal property, or only their personal labor and services, if they afterwards acquire any property in the partnership business and with partnership funds, it belongs to the firm, and not to the members individually.

Civil Code, Section 2401.

Section 382.—PARTNER'S INTEREST IN PARTNERSHIP PROPERTY.—The interest of each member of a partnership extends to every portion of its property. One partner has no interest distinct from the other in the assets

of the firm. One partner has no control of the partnership assets which the other cannot have. The property of the partnership is common, held by a community of interest; and it is always first liable for the partnership debts, before any of it can be applied to the individual use or individual debts of either partner.

Section 383.—POSSESSION OF PARTNERSHIP PROPERTY.—Partners are equally entitled to possession of the partnership property. Partners are joint owners and possessors of all the capital stock, funds, and effects belonging to the partnership, as well as of those which belonged to it at the time of its first formation and establishment; so that, whether its stock, funds, or effects be the product of their labors or manufactures, or be received or acquired by sale, barter, or otherwise, in the course of their trade or business, there is an entire community of right and interest between them.

Neither partner has any right or possession of the partnership property to the exclusion of the other. One partner is as much entitled to the possession as the other. Nor would it make any difference if the partnership was dissolved; for in that case both partners would be entitled equally to the possession of the partnership assets, until the partnership affairs could be finally settled up.

Section 384.—PARTNER'S SHARE IN PROFITS AND LOSSES.—In the absence of any agreement on the subject, the shares of partners in the profits or losses of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss. Where there is no agreement between the partners, they are to contribute equally to every loss, whether the loss be unpaid advances, or the loss of the original capital brought in; and this is the rule, whether the partners contribute to the capital in equal shares or not. It is essential to the interest of a valid partnership that there should be a sharing of profits and a sharing

of losses. Profits and losses will be shared equally, if there is no agreement to the contrary, no matter what proportion of the firm assets was originally contributed by each. But the partners may agree between themselves that one shall have a larger share of the profits than the other, or that one, if losses occur, shall bear a larger share of the loss than the other, and this agreement will be valid and binding. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated. But the law recognizes the fact that the inequality of skill, of labor, or of experience, which the partners may bring into the particular business, may not only justify but positively require an inequality of compensation, and of exemption from loss, as a matter of justice and equity between the parties. And the law has, therefore, wisely not prohibited it; but has left it to the parties to exercise their own discretion in these matters, taking care that no fraud, imposition, or undue advantage is taken by one of the other. And wherever stipulations are fairly made between partners, for unequal sharing of profits and losses, the law will uphold and enforce them as valid agreements.

Civil Code, Sections 2403, 2404.

Section 385.—APPLICATION OF PARTNERSHIP PROPERTY TO PAYMENT OF DEBTS.—Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him. The debts of a partnership must be paid out of the partnership property, before any portion of it can be applied to the individual debts of the partners. The interest of a partner may be levied upon for the payment of his debts, but when this is done, the creditors of the firm must be first satisfied, before the property can be taken to pay anybody else.

Section 386.—WHAT IS PARTNERSHIP PROPERTY.—All property, whether real or personal, acquired with partnership funds, is presumed to be partnership property. There is little difficulty in determining the partnership character of personal or movable property, as a stock of goods, for instance; but there is sometimes difficulty in determining the true character of real estate. The deed to real estate must necessarily be made to and be recorded in the individual names of one or more members of the firm. Cases often occur where the partner in whose name real property stands of record denies that it is partnership property and claims it as his own. Whenever this occurs, it is important to know the law governing the matter. It is the general rule in law that real or immovable property is deemed to belong to the persons in whose name the deed stands. But, as to partners, however the recorded title may stand, or in whose name it may be, real estate bought with partnership funds for partnership purposes will always be considered partnership property.

Section 387.—MUTUAL OBLIGATIONS OF PARTNERS.—The relations of partners are necessarily confidential, and they are always bound to deal in good faith one with another. In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his co-partners. He must not obtain any advantage over them in the partnership affairs, by the slightest misrepresentation, concealment, threat, or pressure of any kind. The contract of partnership has its foundation in the mutual respect, confidence, and belief in the entire integrity of each partner, and his sincere devotion to the business and true interests of the partnership; and good faith, reasonable skill and diligence, and the exercise of sound judgment and discretion, are necessarily and naturally expected of each party to the partnership. Judge Story in his book on partnership says, on this subject: "Good faith not only requires that every partner should not make any false representations to his partners, but also that

he should abstain from all concealments, which may be injurious to the partnership business. If, therefore, any partner is guilty of any such concealment, and derives a private benefit therefrom, he will be compelled to account therefor to the partnership. Upon the like ground, where one partner, who exclusively superintended the accounts of the concern, had agreed to purchase the share of his co-partners in the business for a sum, which he knew, from the accounts in his possession, but which he concealed from them, to be for an inadequate consideration, the bargain was set aside in equity, as a constructive fraud; for he could not in fairness deal with the other partners for their share of the profits of the concern without putting them in possession of all the information, which he himself had, with respect to the state of the accounts and the value of the concern." As illustrations of the good faith which must be observed by one partner to another, so clearly explained by Judge Story, it is a violation of good faith for any partner, in conducting the partnership business, to contract secretly with third persons for any private and selfish advantage and benefit to himself, exclusive of the partnership; for all the partnership property and partnership contracts should be managed for the equal benefit of all the partners. If, therefore, any one partner should contract secretly in a matter of partnership concern for any private advantage or benefit to himself, to the disadvantage or in fraud of his partners, he will be compelled to divide his gains with them. So, if a purchase is made on the partnership account by one partner, who secretly stipulates for and receives any reward or allowance from the seller, for his own private profit, he will be compelled to share with his partners. So, where one partner secretly obtains the renewal of a partnership lease in his own name, he will be held a trustee for the firm in the renewed lease. The obligations of partners, however, whatever they may be, do not prevent either member of the firm from engaging in other business on his own account, but it must not be such business as interferes with or is in any way injurious to the partnership.

Civil Code, Section 2411.

Section 388.—LIABILITY OF PARTNERS TO ACCOUNT.—Each member of a partnership must account to it, for everything that he receives on account of the firm. While he must render an account of everything he receives, he is at the same time entitled to reimbursement from the firm for everything that he has properly expended for its benefit, and he is entitled to be reimbursed for all losses and risks which he has necessarily incurred on behalf of the firm.

Civil Code, Section 2412.

Section 389.—COMPENSATION FOR SERVICES TO FIRM.—A partner is not entitled to any compensation for services rendered by him to the partnership. A special agreement may be made among the partners that one shall be paid an extra compensation above his share of the profits, for his services, but the obligation rests entirely upon the agreement of the parties. Where there is no agreement of the kind, the law will not allow one partner to take from the partnership assets any compensation for his services. The reason is, that each partner is under obligations to devote his skill and efforts to the promotion of the common benefits of the firm.

Civil Code, Section 2413.

Section 390.—RENUNCIATION OF PARTNERSHIP.—The law of California provides, that a partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits. To do so, he must give notice to third persons, and to his partner, that he renounces all participation in the future profits of the firm, and that, so far as may be in his power, he dissolves the partnership, and does not intend to be liable on its account for the future. After a partner has given notice of his renunciation of the partnership, he cannot claim any of its subsequent profits, and his partners may proceed to dissolve the partnership. As to the partners, this renunciation ends the partnership.

But as to all other persons the liabilities of the retiring partner continue until proper notice is given. General notice is sufficient as to the public in general; but as to such persons as have had dealings with the firm, actual notice must be given. A partner retiring from the partnership, in order to relieve himself from further liabilities of the firm, must give actual notice of such retirement, and of the dissolution of the partnership, to such persons as have been accustomed to deal with it. It is not essential that such notice shall be given in any particular form; it may be verbal, or in writing; it may be expressed, or it may be implied from circumstances. It must appear, however, with reasonable certainty, that such persons in some way received actual notice. This is so, because established business relations might lead such parties more readily to give the firm credit. Moreover, they are known to the firm, and may be readily, in some proper way, notified. Such notice given in a regular newspaper of general circulation, published in the city, town, or county where the partnership business is carried on, is the usual method of giving information; and this will be sufficient, when continued for a reasonable length of time—this depending somewhat upon the nature, extent, and place of the business.

Civil Code, Sections 2417, 2418.

Section 391.—POWER OF MAJORITY OF PARTNERS.—Where the partnership consists of more than two members, the decision of the majority binds the firm in the conduct of its business. The minority must be consulted in good faith, and when this is done the majority of the members have a right to control the manner of conducting the business. The majority can govern only in the due course of business, and cannot change the general character of the business against the will of one dissenting partner.

Civil Code, Section 2428.

Section 392.—AUTHORITY OF INDIVIDUAL PARTNER.—Every general partner is agent for the partnership in the transaction of its business, and has authority

to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his co-partners by an agreement in writing. Each partner is the general agent of his co-partners as to firm business, and the members of the firm are considered as sanctioning his contracts. Whenever there are written articles, or particular stipulations between the partners, these will regulate their respective power and authority as between themselves, although not, if unknown, in their dealings with third persons. But independently of any such articles or stipulations, each partner possesses an equal and general power and authority in behalf of the firm, to transfer, pledge, exchange, or otherwise dispose of the partnership property and effects, for any and all purposes within the scope and objects of the partnership, and in the course of its trade and business. One partner by virtue of that relation is constituted a general agent for another as to all matters within the scope of the partnership dealings, and has communicated to him, by virtue of that relation, all authority necessary for carrying on the partnership, and all such authority as is usually exercised by partners in the business in which they are engaged. Any restrictions which, by agreement amongst the partners, are attempted to be imposed upon the authority which one possesses as a general agent for the other, are operative only between the partners themselves, and do not limit the authority as to third persons, who acquire rights by their exercise, unless they know that such restrictions have been made. Each partner may enter into any contracts or engagements on behalf of the firm in the ordinary trade and business; as, for example, by buying, or selling, or pledging goods, or by paying, or receiving, or borrowing moneys, or by drawing, or negotiating, or indorsing, or accepting bills of exchange, and promissory notes, and checks, and other negotiable securities, or by procuring insurance for the firm, or by doing any acts which are appropriate to such trade or business, according to the common course and usages of the business. So, each partner may consign goods to an agent or factor for sale on account of the firm, and give instructions and

orders relating to the sale. All such contracts and engagements, acts and things, he has authority to make and do in the name of the firm; and in order to bind the firm, they must ordinarily be made and done in the name of the firm, otherwise they will bind the individual partner only.

Civil Code, Section 2429.

Section 393.—WHAT PARTNER CANNOT DO.—

There are some things which the law of California specially declares one partner alone has no authority to do. (1) He cannot make an assignment of any portion of the partnership property to a creditor, or to a third person in trust for creditors. (2) He cannot dispose of the good-will of the business. (3) He cannot dispose of the whole of the partnership property at once, unless it consists entirely of merchandise. (4) He has no authority to do any act which would make it impossible to carry on the ordinary business of the partnership. (5) One partner has no authority to confess a judgment against the partnership. (6) One partner cannot submit a partnership claim to arbitration.

Civil Code, Section 2430.

Section 394.—PARTNER ENGAGING IN OTHER

BUSINESS.—A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership, or which prevents him from giving to such business all the attention which would be advantageous to it. A partner may engage in any separate business which does not create an interest adverse to the partnership, and which does not take too much of his time from the firm's business.

Civil Code, Sections 2436, 2437.

Section 395.—GENERAL LIABILITY OF PART-

NER.—Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners.

Civil Code, Section 2442.

Section 396.—LIABILITY OF ONE WHO PERMITS HIMSELF TO BE HELD OUT AS A PARTNER.—

Any one permitting himself to be represented as a partner is liable as such to third persons to whom such representation is communicated, and who, on the faith of it, give credit to the partnership. Thus, one who is not actually a partner may make himself liable for the partnership debts, if he knows that he is being represented by the firm as a partner in it, and allows such representation to be made, and it is acted upon in good faith.

Civil Code, Section 2444.

Section 397.—DOING BUSINESS UNDER FICTITIOUS NAME.—

The law provides that every partnership transacting business in this State under a fictitious name, or designation not showing the names of the persons interested as partners in such business, must file with the clerk of the county in which its principal place of business is situated, a certificate stating the names in full of all the members of such partnership and their places of residence, and must publish the same once a week for four successive weeks in a newspaper published in the county, if there be one, and if there be none in such county, then in a newspaper published in an adjoining county. There is one exception, in the case where a commercial or banking partnership, established and doing business in a foreign country, seeks to do business in this State; a foreign firm may use the same partnership name it uses at home, although fictitious, and although it does not show the names of the persons interested as partners. The certificate must be signed by the partners, and acknowledged by them, and must be published within one month after the formation or commencement of the partnership. A new certificate must be made and published whenever there is a change in the membership of the partnership.

Civil Code, Sections 2466, 2467, 2468, 2469.

No person, doing business under a fictitious name, or his assignee or assignees, nor any persons doing business as

partners contrary to the provisions of this law, or their assignee or assignees, shall maintain any action upon or on account of any contract or contracts made, or transactions had, under such fictitious name, or in their partnership name, in any court of this state until the certificate has been filed and the publication has been made as herein required.

Act of the Legislature, approved March 23, 1911.

Section 398.—FORM OF CERTIFICATE OF PARTNERSHIP TRANSACTING BUSINESS UNDER FICTITIOUS NAME.—The following is a form of certificate of partnership transacting business under fictitious name to be filed with the county clerk as provided in section 397:

STATE OF CALIFORNIA }
City and County of San Francisco }^{ss.}

John A. Smith and Henry T. Jones, being duly sworn, say that they are partners, doing business in the City and County of San Francisco, State of California, under the firm name of John A. Smith & Co.; that the names in full of all the members of such partnership, and their places of residence, are as follows, to-wit: John Augustus Smith, residing at 914 Harrison Street, City and County of San Francisco, State of California, and Henry Thomas Jones, residing at 212 Mission Street, City and County of San Francisco, State of California; that the place where the business of said partnership is transacted is at 400 Market Street, City and County of San Francisco, State of California.

In witness whereof we have hereunto set our hands and seals this,day of....., 191

.....(Seal)
.....(Seal)

STATE OF CALIFORNIA }
City and County of San Francisco }^{ss.}

On this,day of....., 191..., before me, a notary public in and for the City and County of San Francisco, State of California, personally appeared John Augustus Smith, and Henry Thomas Jones, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

.....
Notary Public in and for the City and County
of San Francisco, State of California.

Section 399.—SPECIAL PARTNERSHIPS.—A special partnership may be formed in this State by two or more persons, for the transaction of any business except banking or insurance. A special partnership may consist of one or more general partners and one or more special partners.

Section 400.—CERTIFIED STATEMENT OF SPECIAL PARTNERSHIP.—When a special partnership is formed the partners must sign a certificate stating the name under which the partnership is to be conducted; the general nature of the business intended to be transacted; the names of all the partners, and their residences, specifying which are general and which are special partners; the amount of capital which each special partner has contributed to the common stock; and the time at which the partnership will begin and end. This certificate must be acknowledged and recorded in all the counties in which the firm has places of business. An affidavit of each of the partners must be filed for record with the certificate, stating that each of the special partners has paid in the sum named in the certificate. The certificate, or a statement of its substance, must also be published in a newspaper in the county where the original certificate is filed; and if there is no newspaper in that county, then the publication must be made in the nearest newspaper; and this publication must be made once a week for four successive weeks, beginning within one week from the time of filing the certificate for record.

Civil Code, Sections 2479, 2480, 2481, 2483, 2484.

Section 401.—SPECIAL PARTNERSHIP—LIABILITY OF THE PARTNERS.—The general partners in a special partnership are liable to the same extent as partners in a strictly general partnership. They are each liable for all the debts of the firm. But a special partner is only liable for the debts of the firm to the extent of the capital he has put into the business. A special partner may do things which will make him liable as a general partner; for if it appears that he has wilfully made a false statement in the certificate

of partnership, or if he wilfully interferes with the business of the firm, or if he represents himself as a general partner in the firm, he will be liable as a general partner; that is, he will be liable for all debts of the firm.

Civil Code, Sections 2500, 2501.

Section 402.—RIGHTS OF SPECIAL PARTNERS.

—Only the general partners have authority to transact the business of a special partnership. The special partner, while he has no right to engage in or interfere with the authority of the general partners to conduct the business of the firm, yet may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management of the business. A special partner may lend money to the partnership, or advance money for it, and take from it security, and as to such loans or advances he will have the same rights as any other creditor; but in case of the insolvency of the firm, all other claims which he may have against it will be postponed until all other creditors are satisfied. In all matters relating to a special partnership, the general partners may sue and be sued alone, as if there were no special partners. No special partner, under any pretense, has any right to withdraw any of the capital invested by him in the partnership, during its continuance.

Civil Code, Sections 2489, 2490, 2491, 2492, 2493.

Section 403.—FORM OF CERTIFICATE OF SPECIAL PARTNERSHIP.—The following is a form of the certified statement of special partnership to be made and recorded as specified in section 400:

STATE OF CALIFORNIA, }
County of Los Angeles. } ss.

Henry S. Green, John A. Jones, and Alfred T. Smith, being duly sworn, say: That they have formed a special partnership to do business at the City of Los Angeles, State of California, under the firm name of Henry S. Green & Co.; that the name under which said partnership is to be conducted is Henry S. Green & Co.; that the business intended

to be transacted by said partnership is the dealing in general merchandise, and the buying and selling at retail of groceries and dry goods; that the names of all the partners, general and special, and the residence of each of said partners, are as follows, to-wit: Henry Samuel Green, a general partner, residing at No. 200 Hill Street, Los Angeles, State of California; John Arthur Jones, a general partner, residing at No. 300 Green Street, Los Angeles, State of California; and Alfred Thomas Smith, a special partner, residing at No. 500 Mason Street, City and County of San Francisco, State of California; that the amount of capital which the said Alfred Thomas Smith has contributed to the common stock of said partnership is the sum of \$5000; and that said partnership will begin on the.....day of....., 191.., and end on the.....day of....., 191..

In witness whereof, we have hereunto set our hands and seals this.....day of....., 191...
.....(Seal.)
.....(Seal.)
.....(Seal.)

STATE OF CALIFORNIA, }
County of Los Angeles. } ss.

On this.....day of....., 191.., before me, a notary public in and for the County of Los Angeles, State of California, personally appeared Henry Samuel Green, John Arthur Jones, and Alfred Thomas Smith, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

.....
Notary Public in and for the County of
Los Angeles, State of California.

(a) Affidavit That Special Partner Has Paid in His Share.—An affidavit of each of the partners must be filed for record with the certificate, stating that each of the special partners have paid in the sum named in the certificate. The following is a form of this affidavit:

AFFIDAVIT OF HENRY S. GREEN.

STATE OF CALIFORNIA, }
County of Los Angeles. } ss.

Henry Samuel Green, being duly sworn, says: that he is a general partner named in the certified statement of special

partnership this day filed for record, in which he and John Arthur Jones are named as general partners and Alfred Thomas Smith as special partner, under the firm name of Henry S. Green & Co.; that the said Alfred Thomas Smith, named in the said certificate of partnership, as a special partner, has paid in the sum of \$5000, the sum named in said certificate.

.....
 Subscribed and sworn to before me this.....day
 of....., 191...

.....
 Notary Public in and for the County of
 Los Angeles, State of California.

AFFIDAVIT OF JOHN A. JONES.

STATE OF CALIFORNIA, }
 County of Los Angeles. } ss.

John Arthur Jones, being duly sworn, says: that he is a general partner named in the certified statement of special partnership this day filed for record, in which he and Henry Samuel Green are named as general partners and Alfred Thomas Smith as special partner, under the firm name of Henry S. Green & Co.; that the said Alfred Thomas Smith, named in the said certificate of partnership as a special partner, has paid in the sum of \$5000, the sum named in said certificate.

.....
 Subscribed and sworn to before me this.....day
 of....., 191...

.....
 Notary Public in and for the County of
 Los Angeles, State of California.

AFFIDAVIT OF ALFRED T. SMITH.

STATE OF CALIFORNIA, }
 County of Los Angeles. } ss.

Alfred Thomas Smith, being duly sworn, says: that he is the special partner named in the certified statement of special partnership this day filed for record, in which he is named as special partner and Henry Samuel Green and John Arthur Jones, as general partners, under the firm name of Henry S. Green & Co.; that he, the said Alfred Thomas Smith, named in the said certificate of partnership as a special partner,

has paid in the sum of \$5000, the sum named in said certificate.

.....
 Subscribed and sworn to before me this.....day
 of....., 191...

.....
 Notary Public in and for the County of
 Los Angeles, State of California.

Section 404.—INTEREST AND PROFITS OF SPECIAL PARTNER.—A special partner may receive such interest on his money invested, and such proportion of the profits, as may be agreed upon between him and the general partners.

Section 405.—MINING PARTNERSHIPS.—A mining partnership is different in its nature and creation from the ordinary partnerships known to commercial life. An express agreement to become partners, or to share the profits and losses, is not necessary in the creation or existence of a mining partnership. The law of California provides, that a mining partnership arises from the ownership of shares or interests in the mine, and the working of the mine for the purpose of extracting the mineral from it. The miners must own or have acquired the mine, and be actually engaged in working it; and when they do so, the law looks upon their relations as those of a partnership, without the necessity of a written or oral agreement to share profits and losses. It is not necessary that the miners hold the legal title to the mine in order to become partners. If they acquire a mining claim, though it is not patented, and may never be, still they are mining partners if they actually engage in working the mine for the purpose of extracting the mineral from it. The mining partners need not all have equal interests in the profits. If a number of miners acquire a claim and work it, on shares, whether the shares be equal or not, it is a mining partnership. The essential difference between the ordinary partnerships and a mining partnership is, that in a mining partnership there is no choice of partners. One mem-

ber of a mining partnership may sell his interest or share in the mine, and the partnership is not dissolved, and as to those who continue to work the mine, the partnership continues to exist; while in a general partnership, the sale by one partner dissolves the partnership, because none of the general partners can force a new member into the firm.

Civil Code, Sections 2511, 2512.

Section 406.—PROFITS AND LOSSES IN MINING PARTNERSHIP.—A mining partner shares in the profits and losses in proportion to the interest or share which he owns in the whole mine, and the proportion which his interest bears to the whole partnership capital or whole number of shares.

Section 407.—LIABILITY OF MINING PARTNERS.—Each mining partner is, as to third parties, liable for the entire debts of the partnership. If one mining partner pays the debts, or advances money for the use of the partnership, he has a lien on the property of the partnership for his money. And the law declares that this lien shall exist, even though there is an agreement among the partners that it must not.

Civil Code, Section 2514.

Section 408.—MINING GROUND PARTNERSHIP PROPERTY.—The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property. But a mere agreement to work a mine in the future, upon the happening of a contingency, does not make it partnership property. Justice Temple, of the Supreme Court of California, in the mining case of *Dorsey vs. Newcomer*, speaking of the partnership property of miners, said: "It is not always easy to determine what constitutes the partnership property of a mining partnership. The statute provides that the mining ground owned and worked by partners in mining, whether purchased by the partnership or not, is partnership property. It does

not follow that property other than the ground owned and worked may not also be partnership property. No doubt, other property acquired by the partnership for the purpose of aiding in working the mining claim, such as a mill or mill site, would also be property of the partnership. So, other mining ground acquired for the purpose of working with the mining ground already being worked, and so situated that it can be worked with the original claim as parts of one mine, would be partnership property. And, generally, property acquired by the partnership by the use of partnership funds, as distinguished from the individuals constituting the firm, may be so regarded. But the statute evidently distinguishes between ground owned or acquired for the purpose of working, and ground actually worked. It is only the last that in general can be regarded as partnership property, when not acquired by the partnership, or by the use of its funds." (Decided by the Supreme Court of California, in the case of *Thomas B. Dorsey vs. J. T. Newcomer*, which decision is printed in Volume 121 of the California Reports, page 213.)

Civil Code, Section 2515.

Section 409.—NEW MEMBER OF MINING PARTNERSHIP.—One of the partners in a mining partnership may sell his interest in the mine and business without dissolving the partnership. And the purchaser, from the date of his purchase, becomes a member of the partnership. But the purchaser of an interest in the mining ground takes it subject to the liens existing in favor of the partners, for debts due the creditors, or advances made for the benefit of the partnership, of which he has notice; and the purchaser of the interest of a partner in a mine when the partners are engaged in working it, is charged by the law with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

Civil Code, Sections 2516, 2517, 2518.

Section 410.—CONTRACT IN WRITING.—No member of a mining partnership, or any agent or manager of the

firm, can bind the partnership by a contract in writing, except by express authority from all the members of the firm. He cannot bind the partnership by making a promissory note, or by any agreement in writing affecting the partnership property.

Civil Code, Section 2519.

Section 411.—OWNERS OF MAJORITY OF SHARES GOVERN CONDUCT OF MINE.—The decision of the partners owning a majority of the shares or interests in a mining partnership will always control the conduct of its business. As the mining property can only be used as a whole, it is indispensable in conducting the business of mining that those owning the larger portion of the property should have the power to control, in case all cannot agree, for otherwise the work might become wholly discontinued at any time. The powers of the individual members of a mining partnership are much more limited than are the powers of the individual members of a purely commercial or trading partnership. What may be necessary and proper for carrying on the business of mining, for the joint benefit of all concerned, must always be determined by those owning and holding in the aggregate the majority interest in the property. And if the powers which are thus exercised by the majority are not necessary and proper for the success of the enterprise, those whose interests may be imperiled or disastrously affected by the improper conduct of the majority have the right to resort to the courts for redress and protection.

Civil Code, Section 2520.

Section 412.—DURATION OF PARTNERSHIP.—If no term is prescribed by agreement for the duration of a partnership, a general partnership will continue for an indefinite time, until dissolved by mutual consent, or by a partner, or by the law.

Section 413.—TOTAL DISSOLUTION OF PARTNERSHIP.—A general partnership is dissolved as to all of

the partners: (1) By lapse of the time prescribed by agreement for its duration; (2) By the expressed will of any partner, if there is no such agreement; (3) By the death of a partner; (4) By the transfer to a person, not a partner, of the interest of any partner in the partnership property; (5) By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or, (6) By a judgment of dissolution. But, as we have already seen, there is an exception in the case of a mining partnership, which is not dissolved by the death of one partner or the sale of the partner's interest.

Civil Code, Section 2450.

Section 414.—PARTIAL DISSOLUTION OF PARTNERSHIP.—A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance; subject, however, to liability to his co-partners for any damage caused them.

Civil Code, Section 2451.

Section 415.—WHEN PARTNER ENTITLED TO DISSOLUTION.—A partner is entitled to a dissolution: (1) When he, or another partner, becomes legally incapable of contracting; (2) When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or, (3) When the business of the partnership can be carried on only at a permanent loss.

Partners may, at the time of forming the partnership, prescribe the period for which it shall endure, and how and when it may be determined. Its continuance may be for a definite term, or it may be at the will of the partners; and it is well settled that a partnership at will may be terminated at the pleasure of any member of the firm, so long as he acts without fraudulent intent. As partnerships are formed by the mutual agreement of all the partners, so may they be altered, modified, or dissolved, by like agreement. A partnership for a definite period may be dissolved by mutual consent.

But an express agreement to dissolve is not necessary. Words and acts implying such intention are sufficient. If partners, by mutual consent, cease to do business, and divide the partnership property, this amounts to a dissolution, as much as if done by an express agreement to that effect. A partnership is none the less ended by reason of the fact that certain specific property of the firm, after a settlement and adjustment of the firm business, remains unsold, and that each partner, under the settlement, retains his proportionate part of such property.

Notwithstanding that a time for the dissolution of a firm may be fixed by partnership articles, or that the partners may dissolve by agreement, express or implied, before such time, the partnership may be dissolved by the happening of any of the events which, in law, are held to effect that result. Thus, the withdrawal of a partner causes a dissolution of the firm; and the introduction of a new member into an existing partnership works its dissolution, and the creation of a new partnership. If both partners refuse to perform their part of the partnership agreement, there is no law requiring, or recognizing, a continuance of the partnership. A firm is dissolved when it ceases to do the business for which it was organized.

The mere fact, alone, that a partnership is insolvent does not operate as a dissolution of the firm. There must be a stoppage of payment, assignment, or act amounting in law to a declaration of insolvency, to work a dissolution. An assignment, however, by co-partners, for the benefit of their creditors, of the entire firm assets, except property exempt from execution, operates as a dissolution of the partnership.

The mere filing of an attachment against partnership property does not dissolve the partnership; nor will the mere seizure of such property under a writ of attachment have that effect; and it has been held by the courts that the seizure under execution of the interest of a defendant in partnership property does not dissolve the partnership; but a levy of execution against one partner on his interest in the firm, and the sale of such interest, does dissolve the firm.

A sale which practically includes all of the property used by a firm in carrying on its business, whether made by the firm or by a member, operates as a dissolution of the partnership. The destruction of the property which is the subject matter of the co-partnership is another cause which will work a dissolution. A court of equity may decree the dissolution of a partnership during the term for which it was entered into, and declare it void, where there is fraud, imposition, misrepresentation, or oppression in the original agreement.

Equity has jurisdiction, where a person has been induced by fraudulent representation to enter into a partnership, to rescind the contract at his instance, and put an end to it. Misrepresentation of material facts is a ground for setting aside a partnership contract. A person who has been induced to enter into a partnership, by a material misrepresentation of the other party, is entitled to have the contract set aside.

One partner cannot, by any act of his own, and at his will, terminate a partnership for a fixed period, before that period has elapsed. A partnership agreement, like any other, is binding upon the parties, and they must adhere to its terms. Neither partner is at liberty to recede from it against the will of the other, without a sufficient cause.

A court of equity may decree a dissolution of the partnership, for causes arising subsequently to the formation of the contract, founded upon misconduct, or fraud, or violation of duty, of one partner; or on account of the inability or incapacity of one partner to perform his obligations and duties, and to contribute his skill, labor, and diligence in the promotion and accomplishment of the objects of the partnership; or for the existence of facts rendering it impracticable to carry on the undertaking for which the partnership was formed.

A court of equity will dissolve a partnership where all confidence between the partners has been destroyed, so that they cannot proceed together in prosecuting the business for which it was formed. And this result follows, not only where such want of confidence is occasioned by the misconduct or

gross mismanagement of the partner against whom the dissolution is sought, but also when such want of confidence and distrust has arisen from other circumstances, provided it has become such as cannot probably be overcome. But a partner who, by his own wilful misconduct, has caused such want of confidence, will not be allowed to take advantage of it to procure a dissolution. If a partner's acts are inconsistent with the duty of partners, and of a nature to destroy the mutual confidence which ought to subsist between them, and makes it impossible that the business can be conducted in partnership with benefit to either party, a court of equity will decree a dissolution before the expiration of the term for which the partnership was entered into. The same is true where the circumstances have so changed as to render it impossible to carry on the partnership without injury to all the partners. A partnership will be dissolved where one of the firm has deliberately resolved to break up and ruin its business, or where ill feeling between the partners renders it impossible to conduct the business successfully.

The wrongful exclusion of one partner from the business, or refusal to allow him to inspect the books, is a cause for dissolution of the partnership.

It is a sufficient cause for dissolution of a partnership that it clearly appears that the business for which the partnership was formed is impracticable, or cannot be carried on except at a loss.

A partner's failure or refusal to comply with the terms of the partnership agreement as to contributing capital or funds required for the successful prosecution of the business is also a cause for dissolution, whether such failure or refusal arises from disinclination or inability. Thus, if a partnership is formed for the purpose of buying and selling land, each partner to furnish an equal share of money, the refusal of one to make the necessary advances would be a good cause for putting an end to the partnership. And, if a partner refuses to manufacture articles as agreed, so as to make the works profitable, it is a cause for dissolution.

If a partner, by reason of his infirmities, becomes totally incapable of performing the partnership duties incumbent upon him, a dissolution will be decreed, not only to protect the partner who has become incapacitated, but to relieve the other from the difficult position in which he is placed. Confirmed and incurable insanity is a ground for dissolving a partnership, and when it is shown that a partner is so far disordered in his mind as to be incapable of conducting the firm business according to the terms of the contract of co-partnership, a court of equity will dissolve the firm. After an adjudication of the insanity of one partner, the continuing partner may apply for a dissolution of the partnership, if he so desires; or, if it is a partnership at will, he may dissolve it of his own volition; but where one partner has been adjudged insane, and the remaining partner continues the business as before, without objection or notice to any one, it is presumed that he did not intend a dissolution of the firm, but that he waited to determine whether the incapacity of his partner would prove merely temporary, and whether it would become practicable for him to resume business. So long as he thus continues to carry on the business, without seeking to dissolve the partnership, there is no dissolution, nor is he excused from accounting for the profits derived by him from the business of the firm.

Partners may provide in their contract that certain acts or conduct shall operate to dissolve the partnership; but, in the absence of special agreement, courts may dissolve a partnership for misconduct, gross neglect, or breach of partnership duty. As a general rule, gross misconduct, want of good faith, or gross want of diligence, or such cause as is productive of serious and permanent injury to the partnership concerns, or renders it impracticable to carry on the partnership business, is proper ground for dissolution. Habitual intoxication, extravagance, and dishonesty are good grounds for dissolution.

If quarrels, dissensions, or chronic hostility between partners are of such serious and permanent character as to prevent the profitable continuance of the partnership business,

on the terms of the agreement between the partners, a dissolution will be decreed. Violent disputes, ill will, or dissensions between the partners, which entirely prevent the beneficial effects of a connection, are sufficient to justify a decree of dissolution. A dissolution should be decreed where it appears that the partners are in a constant state of quarrel; that one makes a rule of going to the office at an early hour, opening all the letters addressed to the firm, and failing to communicate the contents to the other; that the other partner is always arbitrary in his action; and that, generally, what one wants to do the other objects to.

A court of equity will not dissolve a co-partnership unless cause is shown, and the mere desire of a partner for a dissolution is not a sufficient cause. It is not for every act of misconduct on the part of one partner that a court of equity, at the instance of another partner, will dissolve the partnership and close up the affairs of the company. The court will require a strong case to be made, and it is a general principle that a court has no jurisdiction to make a separation between partners for trifling causes, or temporary grievances, involving no permanent mischief. Thus, it is not sufficient cause for the dissolution of a firm that a loss occurs to it through a partner's mere error of judgment, or that there is a mere dissatisfaction between partners. A court of equity will not decree a dissolution of a partnership, unless it is shown that the defendant has substantially failed in the performance of his part of the partnership agreement.

Civil Code, Section 2452.

Section 416.—NOTICE OF DISSOLUTION OF PARTNERSHIP.—The liability of a general partner for the acts of his co-partners continues, even after a dissolution of the co-partnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution. The liability of a partner may extend beyond the indebtedness existing at the dissolution, and include indebtedness

subsequently contracted in favor of persons relying on the partnership, and who did not have any notice of its dissolution. Those who have dealt with the firm before dissolution are entitled to hold all the partners liable for debts contracted afterwards in good faith, in the belief that the firm still continues, and in reliance upon its assets and the personal responsibility of its members. As to such customers, actual notice is required to exempt from liability any member of the firm, though he has retired. The fact that notice was mailed to such customer, or was published in a newspaper of general circulation, and such newspaper mailed to a creditor with a red line drawn about the notice for the purpose of attracting attention to it, or that the dissolution had attained general notoriety, cannot defeat the customer's claim to hold all the members of the firm answerable, if it appears that he did not have actual notice of the dissolution. Persons who have not dealt with the firm before its dissolution are not entitled to actual notice, and cannot hold a retiring member answerable if notice of the dissolution has been given by publication in a newspaper. A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner.

Civil Code, Sections 2453, 2454.

Section 417.—WINDING UP THE PARTNERSHIP AFFAIRS.—After the dissolution of a partnership, its affairs must be wound up, and its property disposed of. No new contracts are to be made, no new business transacted; but only the final disposition of the assets of the firm, the collection of the accounts, the payment of the debts, the distribution of the property left over. Any member of a general partnership may act in the winding up of its affairs. By consent of all the partners, the final settlement of the affairs of the firm may be committed to one of the partners, and the other partners will then have no right to act. The partner

authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, and pay or compromise any claims against it, and dispose of the partnership property; he may also indorse, in the name of the firm, promissory notes or other obligations held by the partnership, for the purpose of collecting them, but he cannot create any new obligation in the name of the firm.

Civil Code, Sections 2459, 2460, 2461, 2462.

Section 418.—RIGHTS OF PARTNERS AFTER DISSOLUTION.—Each partner, after the dissolution of the firm, has an equal right to the possession of its assets. And if the liquidation of the partnership affairs is not left in the hands of certain members of the firm, by consent of all the partners, then each partner has the right to do whatever acts are necessary to complete the business of the partnership, and fulfil its contracts; and, as each partner is interested in seeing the business closed, by the collection of the assets, and the payment of the firm's obligations, and a division of the remainder, each may take steps looking to that end, and exercise the power vested in him as a partner to dispose of and preserve the property of the firm, and pay its obligations. After dissolution of the firm each of the partners has the right to enter into the same or any other business on his own account. If property of the firm is in possession of one of the members of the partnership, he has the power to take such measures as are necessary for its preservation and protection. Each of the partners, in the absence of an agreement to the contrary, is bound to give his services to the business of the firm, and this remains true after its dissolution so far as is necessary to the winding up of its affairs. After the dissolution of the partnership, each partner remains liable for the indebtedness of the firm, to the same extent as before.

Section 419.—FORM OF PARTNERSHIP AGREEMENT.—The following is a form of partnership agreement:

Articles of Co-partnership, made and entered into the
.....day of....., 191., between

....., of
 State of California, and.....
, of the same place:

The said parties above named have agreed, and by these presents do agree, to become partners in business together, under and by the name, firm, and style of (here state name of firm), in the business of (here state the kind of business to be transacted by the firm), at (here state name of place where the business is to be conducted), State of California; their co-partnership to commence on the day of, 191.., and to continue..... years thence next ensuing, fully to be completed and ended, and to that end and purpose the said parties have delivered in as capital stock the sum of..... Dollars, gold coin of the United States, share and share alike, to be used and employed in common between them, for the support and management of the said business, to their mutual benefit and advantage. And it is agreed, by and between the said parties, that at all times during the continuance of their co-partnership, they and each of them will give their attendance, and do their and each of their best endeavors, and to the utmost of their skill and power exert themselves, for their joint interest, profit, benefit, and advantage, in the business aforesaid; that they shall and will, at all times during their co-partnership, bear, pay, and discharge, equally between them, all rents and other expenses that may be required for the support and management of the said business; that all gains, profits, and increase that shall come, grow, or arise from or by means of the said business, shall be divided between them, share and share alike; and all loss that shall happen to their said joint business, by bad debts, or otherwise, shall be borne and paid equally between them; that there shall be kept, at all times during the continuance of their co-partnership, perfect, just, and true books of accounts, wherein each of the said co-partners shall enter and set down, as well all money by them, or either of them, received, paid, laid out, and expended, in and about the said business, as also all the goods, wares, merchandise, and commodities, by them, or either of them, bought or sold, by reason or on account of the said business, and all other matters and things whatsoever, to the said business and management thereof in anywise belonging; which said books shall be used in common between the said co-partners, so that either of them may have access thereto without any interruption or hindrance of the other;

that the said co-partners, once in each year, during the continuance of the said co-partnership, as aforesaid, to-wit: on theday of....., in each year, or oftener if necessary, shall make, yield, and render, each to the other, a true, just, and perfect inventory and account, of all the profits and increase by them, or either of them, made, and of all loss by them, or either of them, sustained, and also of all payments, receipts, disbursements, and of all other things by them made, received, disbursed, acted, or suffered, in their said business; and the said account being so made, they shall and will clear and adjust, each to the other, at the time, their just share of the profits so made as aforesaid; that during the continuance of the said co-partnership, neither of them shall or will indorse any note, or otherwise become security for any person or persons whomsoever, without the consent of the other said co-partner; that at the end of said term, or other sooner determination of their co-partnership, the said co-partners, each to the other, shall and will make a true, just, and final account of all things relating to their said business, and in all things truly adjust the same; and that all and every stock and stocks, as well as the gains and increase thereof, which shall appear to be remaining, either in money, goods, wares, fixtures, debts, or otherwise, shall be divided between them, share and share alike.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

.....(Seal.)
(Seal.)

Surveys of Land.

Section 420.—PUBLIC AND PRIVATE LAND SURVEYS.—One of the fruitful causes of litigation in California, litigation which involves the title and possession of land in nearly every county in the State, and the legal rights and obligations of thousands of people, is the question of the correctness of public and private land surveys. Therefore, every owner of land, especially in the rural districts of the State, is interested in knowing something about the law relative to public and private land surveys.

Section 421.—GOVERNMENT SURVEYS.—It is important for the land owner, when he believes or is informed that others are encroaching upon the lines of his land as originally surveyed and established, to know what the law is as to Government surveys. For private surveys, made by County Surveyors or other surveyors at the request of individual owners, can have but one object, and that is to find where the lines were originally established by the Government survey. For the purpose of giving such information as may be of value to the landowner, the following sections under the head of "Surveys of Land" have been prepared.

Section 422.—GOVERNMENT SURVEY ACCEPTED AND APPROVED IS FIXED AND UNCHANGEABLE.—First, it is important to know, that a survey accepted and approved by the Government of the United States is fixed and unchangeable. People may think that the original survey was not correct, but that makes no difference. As a matter of fact, very few Township surveys are absolutely correct, and in many of them serious errors were made as reported by the Government surveyors. And, too, many of those who took contracts to survey Government lands were dishonest or incompetent, or both together, and instead of going over the ground, this class of surveyors contented themselves with sitting on a rock and guessing at the surrounding country. But it was in the interest of the peace and security of settlers upon the public domain that their occupation of the land should not be disturbed afterwards by the claim that the Government survey was not properly or correctly made; and as all titles to land in this country run back to the original ownership of the Government, it is evident that the extent and lines of any particular lot of land must rest upon the original survey made for and accepted by the United States; and for the purpose of security in titles, and so that private surveys may have something solid to rest upon, the Government of the United States has adopted the unvarying rule, that a survey accepted and approved by the Government of the United States, whether

correct or incorrect, is final and conclusive, fixed and unchangeable, and neither oral evidence nor private surveys can be admitted to contradict it.

Section 423.—FINDING ORIGINAL LOCATION OF TOWNSHIP LINE.—After many years, it frequently happens that adjoining land owners will differ as to the place where the Government surveyor really located a Township line, and to ascertain its true location in the lapse of a quarter of a century or more may be a matter of much difficulty for private surveyors. Mounds of stone may have fallen down and become scattered so as to lose their identity; corner stakes may have been burned away or pulled up and cast aside; witness trees may have disappeared, by fire or the ax, or by natural decay, or force of storms; so that all or nearly all of the monuments marked and placed upon the line by the Government surveyor, as he ran and established it, may have become obliterated and lost in the course of time. But the law has established certain rules and regulations for the guidance of private surveyors under such circumstances, which rules and regulations must always be followed by a surveyor seeking to locate the place where the line was originally established, if he expects to make a survey that will be of any value to his employer.

Section 424.—FIELD NOTES AND MAPS.—A private surveyor, seeking to find the true location of the Government lines, should have with him the field notes and maps of the original survey, certified copies of which can be obtained from the office of the United States Surveyor-General through the office at San Francisco. The field notes are always to be considered before the maps. The field notes made by the Government surveyor afford the best evidence of the place where the line was located, and control the maps or plats. The maps are made from the field notes, therefore the field notes are entitled to first consideration.

Section 425.—MONUMENTS ON THE GROUND.—The private surveyor, employed to locate the Government

line, must find the monuments on the ground, called for by the field notes. If the original stakes, and mounds of rock, and witness trees, marked for Section corners and quarter Section corners, and closing corners on the Township line, are all in place, where the Government surveyor put them, and as called for by the field notes, the work of the private surveyor will be easy. But in controversies which arise over boundaries of land, it nearly always happens that most of the artificial monuments, the stakes, and mounds, have disappeared, and that some of the witness trees cannot be found. It is the duty of the private surveyor to try to find the stakes set by the Government surveyor, of course; but if he finds stakes, with the right marks for certain corners, it may be denied that they are the original stakes, or it may be claimed that they have been moved from the place where the original surveyor placed them. So that the natural objects called for by the field notes, objects which never change, and cannot be moved, such as creeks, rivers, bluffs, roads or trails, ponds, ridges, or other permanent features of the earth's surface, when found by the private surveyor in the position corresponding to the calls of the field notes, are really the most certain and satisfactory evidence that he is on the right line. And from the observations above made, it may be said, that the rule as to monuments which must govern the private surveyor in his work, and which will always be safe for the land owner for whom the work is being done, is as follows: It was the duty of the Government surveyor to note all natural objects in his field notes, and in trying to find where the Township line was actually run and established by the Government survey, the private surveyor must give careful consideration, with reference to the field notes, to permanent monuments set, their size, kind, and location, with reference to the corners which they are intended to perpetuate; bearing or witness trees marked in the field; all nearest known original corners, in all directions, following section lines; all natural objects called for by the field notes, such as creeks, rivers, bluffs,

roads or trails, ponds, ridges, or other unchanging features of the earth's surface.

Section 426.—TOWNSHIPS.—The public lands of the United States are primarily surveyed into uniform rectangular tracts, six miles square, called Townships, bounded by lines conforming to the cardinal points—North, South, East, and West—and containing, as nearly as may be, 23,040 acres.

Section 427.—SECTIONS.—The Townships are subdivided into thirty-six tracts, one mile square, called Sections, containing in full Sections 640 acres. The Sections in a Township are numbered consecutively from 1 to 36, beginning at the Northeast corner of the Township and numbering West with the North tier of Sections, thence East with the second tier, West with the third tier, and so on to Section 36 in the Southeast angle of the Township.

Section 428.—SUBDIVISIONS OF SECTIONS.—Sections are divided into four equal parts of 160 acres each, called quarter Sections, and each quarter Section is again divided into two half-quarter Sections of 80 acres, or four quarter-quarters containing 40 acres each. These are called Legal Subdivisions, and are the only divisions recognized by the Government in disposing of the public lands, except where tracts are made fractional by water courses or other causes. When tracts are fractional, the smallest legal subdivision may contain less than 40 acres or more than 40 acres, and they are then designated as Lots, to distinguish them from the legal subdivisions which contain exactly 40 acres. The subdivisions of Sections are not actually surveyed and marked on the ground. Quarter section or half mile posts are established on the boundaries of the Sections; but the interior subdivisional lines of Sections are made only on the plats of Townships, at the Surveyor-General's office, and when the boundaries of these subdivisions are required to be established on the ground, it must be done by a private survey.

Section 429.—PRINCIPAL MERIDIANS AND BASE LINES.—Two principal lines are established prior to the survey of the Townships—a north and south line denominated a Principal Meridian, and an east and west line styled a Base Line. These lines constitute the basis of the public surveys, and are prerequisite to the laying out of the Township.

Section 430.—RANGES.—Any number or series of Townships situated in a tier North and South are denominated a Range, and the Ranges are designated by Numbers East and West, as the case may be, from the governing meridians. The Townships in each Range are also numbered North or South from established base lines.

Section 431.—STANDARD CORNERS.—At the time the parallels and base line are run, the Township, Section, and quarter Section corners are established thereon. As the Township and Section lines North are run from them, it follows that these corners will be common to two Townships, Sections, or quarter Sections North of the parallel or base line, and these are called Standard Corners.

Section 432.—CLOSING CORNERS.—North and South lines are required to run on the true meridian. Hence, when the Township and Section lines below reach the parallels or base lines North, they will not close on the Standard Corners if the field of operation be West of the convergency of the meridians, but will strike the line at a distance corresponding to the convergency; East of the Standard Corners if the field of operation be West of the governing meridian, and West of said corners if the surveys be East of the principal meridian. Another set of Township and Section corners is therefore established at the point of intersection with the standard or base line, and the distances of said corners from the corresponding standard corners previously set, are measured and noted in the field book. The corners so established are called Closing Corners, and will, of course, be common to two Townships or Sections South of the base or standard line. No closing quarter Section corners are established.

Section 433.—TOWNSHIP CORNERS.—Township corners are established at intervals of six miles each, and are perpetuated by the following modes: (1) The post is placed first in order, because circumstances render its use most common in practice. Corner posts are required to be four feet in length, and at least five inches in diameter, and are to be planted to the depth of two feet, the part projecting above the ground being squared to receive the marks required to be cut upon them. When the corner is common to four Townships, the post is set cornerwise to the lines, presenting the angles to the cardinal points, and on each flattened side must be marked the number of the Township, Range, and Section which it faces. Six notches will also be cut on each of the four edges. If the post is on a standard parallel or base line, and is common to only two Townships on the North, six notches will be cut in the East, North, and West edges, and the letters "S. C." (Standard Corner) will be cut on the flattened surface, but no notches will be cut in the South edge. If the post is common to two Townships South of the parallel or base line, six notches will be cut in the East, South, and West edges, but none in the North edge, and the letters "C. C." (Closing Corner) must be cut upon the flattened surface. The position of all Township corner posts must be witnessed by four bearing trees, one in each of the adjoining Townships, or by "pits," where trees cannot be found. (2) Township corner stones must be inserted in the ground not less than eight inches, with their sides to the cardinal points, and small mounds of stone should be constructed against the sides of them. The notches on the edges are the only marks required. (3) A tree in place, when employed to perpetuate a Township corner, must be marked and witnessed in the same manner as Townships posts. (4) The post and mound is a common method of marking corners. Mounds at Township corners must be 5 feet in diameter at their base, and $2\frac{1}{2}$ feet in perpendicular height. Posts in Township mounds, therefore, require to be $4\frac{1}{2}$ feet in length, so as to be planted 12 inches in the ground, and allow 12 inches

to project above the mound. The pit for a Township mound will be 18 inches wide, 2 feet in length, and at least 12 inches deep, located 6 feet from post, and on opposite sides. At corners common to four Townships, the pits will be placed on the line and lengthwise to them. On base and parallel lines, where the corners are common to only two Townships, three pits only will be dug—two in line on either side of the post, and one on the line North or South of the corner, as the case may be. By this means the standard and closing corners can be readily distinguished from each other. Posts in mounds should be notched, marked, and faced precisely as posts without the mound.

Section 434.—SECTION CORNERS.—Section corners are established at intervals of 1 mile or 80 chains, and four modes of perpetuating corners are employed to mark them: (1) Post for Section corner must be 4 feet in length and 4 inches in diameter, firmly planted or driven into the ground to the depth of 2 feet, the part projecting being squared to receive the required marks. When the corner is common to four sections, the post will be set cornerwise to the line, and on each flattened surface will be marked the number of the Section which it faces; also, on the Northeast face, the number of the Township and Range will be cut. All mile posts on Township lines will have as many notches on the two corresponding edges as they are miles distant from the respective Township corners. Section posts in the interior of a Township will have as many notches on the South and East edges as they are miles from the South and East boundaries of the Township, but no notches on the North and West edges. By this plan the corner can be identified thereafter, if the post be found lying upon the ground. All Section posts, whether in the interior of a Township or on a Township line, must be witnessed by four bearing trees, one in each of the adjoining Sections. When the requisite number of bearing trees cannot be found, the deficiency will be supplied by substituting pits 18 inches square, and not less than 12 inches in depth. (2) Mounds at Section corners will be $4\frac{1}{2}$ feet in

diameter at their base, and 2 feet in perpendicular height; the post being 4 feet in length and inserted 12 inches in the ground. The post must be not less than 3 inches square, and marked and witnessed the same as the post without the mound. At corners common to four Sections, the post in mound will be set with the edge to the cardinal points; at corners common to only two Sections, the flattened sides of the post will face the cardinal points. (3) When stones are used for Section corners on Township lines, they will be set with their edges in the direction of the line; but when standing for interior Section corners, they will be planted facing the North, and should be notched the same as Section Posts similarly situated. No marks except the notches are required, but they will be witnessed by trees or pits as required where posts are used. A tree placed at a Section corner is marked the same as a Section post.

Section 435.—QUARTER SECTION CORNERS.—

Quarter Sections corners are established at intervals of half a mile, or 40 chains, except in the North and West tiers of Sections in a Township. Where the Section lines exceed or fall short of 80 chains, in subdividing these Sections, the quarter post is established just 40 chains from the interior Section corner, throwing the excess or deficiency upon the last half mile. The intervals between the quarter posts and the North and West Township boundaries will therefore be irregular. Quarter Section corners are not required to be established on the North boundary of the Northern tier of Sections in a Township South of and bordering on a standard parallel or base line. Quarter Section corners are perpetuated in the following manner: (1) Posts at quarter Section corners must be 4 feet in length and 4 inches in diameter, and be planted or driven into the ground 2 feet; the part projecting being flattened or squared, so as to present a smooth surface 3 inches in width. The only mark required on a quarter Section post is the character " $\frac{1}{4}$ S." The corner must also be witnessed by two bearing trees. (2) Mounds at quarter Section corners will be $4\frac{1}{2}$ feet in

diameter at their base, and 2 feet in perpendicular height, the post being 4 feet in length and inserted in the ground 12 inches; it will also be marked and witnessed the same as the post without the mound. (3) Stones used for quarter Section corners must have the fraction " $\frac{1}{4}$ " cut upon the West side of North and South lines, and on the North side of East and West lines, and must be witnessed by two bearing trees. (4) A tree, when found in place, should be marked and witnessed in the same manner as the post.

Section 436.—MEANDER CORNERS.—At the points where Township or Section lines intersect large ponds, lakes, bayous, or navigable rivers, posts are established at the time of running the lines, which are called Meander Corners. Either of the four modes described for perpetuating corners may be employed for perpetuating meander corners. (1) No marking is required on meander posts, but they must be witnessed by two bearing trees or pits. They should also be firmly inserted in the ground. (2) The mound and post at meander corners should be the same dimensions as those for the Section and quarter Section corners. The pit should be directly on the line, and 8 links further from the water than the mound. When the pit cannot be so located, its course and distance from the corner should be stated in the field book. (3) Stones or trees may be employed to perpetuate meander corners, and when so used, must be witnessed the same as meander posts.

Section 437.—GOVERNMENT LINES AND CORNERS MUST CONTROL.—As has been said before, where the corners are established by the proper officer in pursuance of the system of subdivision authorized by law, they must be regarded as the true corners which they represent, even if it is subsequently found that any post or corner is out of line, or that the intervals between posts are unequal or incorrect; for no party has a right to correct such errors except the general Government, and it possesses the power only while the title to the lands affected by the change

is yet in the United States. After the lands have passed into the hands of private parties, the Government lines and corners, as marked in the field, must control in determining the boundaries of all legal subdivisions, when they can be found and identified; and when they are missing, recourse must be had to the official plats and field notes of the Government surveyor.

Section 438.—RESTORING LOST CORNERS.—When extinct lines or corners of the public lands are required to be re-established, a County Surveyor or other competent person is usually employed by private parties. It is not the province of the General Land Office to direct the operations of any but Government surveyors engaged in the public service; yet obliterated boundaries must be restored in conformity with the laws and regulations under which they were originally established. Extinct lines or corners must be restored to the exact locality they originally occupied, if possible. Resort should first be had to the marks in the field. The surveyor should first seek to identify the missing corner on the ground, by the aid of the bearing trees or witness mounds, line trees, etc., described in the original field notes. When two or more witness trees or mounds can be found, they afford the best means for restoring a missing corner to its original position that can be had. If the corner cannot be identified in this manner, clear and unquestionable testimony as to the locality it originally occupied should be taken, if such testimony be obtainable. This testimony must be had from the lips of old settlers, residents of the neighborhood, who may be able to point out from their personal observation and recollection the position of a stake or mound set by the original surveyor at the time the line was run. Ax-men, or chainmen, who were with the Government surveyor, may be sworn and their affidavits taken as to the original location of missing corners, and generally, as to their knowledge of the place where the Government surveyor located the line which the private surveyor is endeavoring to retrace. But this sort of evidence is always more or less unreliable,

and subject to abuse; and, after all, the monuments placed on the ground by the Creator, which neither time nor man can efface or change—mountains, rivers, the ocean bluff, ponds and lakes, and other prominent features of the earth's surface—these, when they correspond with the field notes of the original survey, form the best evidence of the true location of the lines and corners established by the Government surveyor.

Section 439. — PERPETUATING CORNERS. — The Legislature of 1905 passed a law making it the duty of County Surveyors to perpetuate so far as possible the corners established by the Government surveys. The law provides that when any County Surveyor shall find a Government corner marked in the original survey by placing charcoal in the ground, or by a wooden stake, earth mound, or other perishable monument, it shall be his duty to re-mark said corner by placing therein a monument of heavily galvanized iron pipe, or galvanized iron stake, not less than two inches in diameter and two feet long, or that he may use some other material not less in size and equally imperishable. All such monuments located in public highways must be placed with the top not less than twelve inches below the surface of the ground, but when not located in public highways they must be placed with the top six inches above the surface of the ground. If the top of the monument is placed above the ground, it must not be less than four feet long, if of metal. The surveyor must note witness objects that are within a reasonable distance of any corner, and state distance and course from the corner, and record his notes in the County Recorder's office. The County Recorder is required to keep a book for the purpose, properly indexed, which shall be a public record. Boards of Supervisors are required to furnish all necessary pipes or stakes for such monuments, on demand, at the county's expense. (Act of the Legislature, approved March 18, 1905.)

Section 440 — PROPORTIONATE MEASUREMENTS.—In retracing lines, it frequently happens that the

measurements do not agree with those stated in the Government field notes. This discrepancy generally arises from a difference in the length of the respective chains used, or a want of proper care in straightening and leveling the chain, or in sticking the pins, on the part of one set of chainmen or the other, but is sometimes owing to an error in tallying committed by the Government chainman. When these differences in measurement occur, the County Surveyor must in all cases establish his corners at intervals proportionate to those given in the Government field notes. This rule must be observed even if the original interval be one or more tallies too many or too few.

Section 441. — INSTRUCTIONS FROM THE GENERAL LAND OFFICE.—The Department of the Interior, through the General Land Office, has from time to time issued circular letters of instruction, stating the rules established by law which must be followed by County Surveyors and others in retracing the lines of Government surveys and relocating missing corners. From these letters of instruction the following rules have been copied, and are recommended to the careful study of the owners of land the boundaries of which are in controversy:

(1) All corners of the public surveys established by the Government surveyors must stand as the true corners they were intended to represent, and the length of lines stated in the field notes of the original survey must be considered as the true lengths thereof.

(2) Missing corners should be restored to the exact position they originally occupied.

(3) All lines subdividing a Section must be straight lines running through the Section from the corner in one boundary to its corresponding corner in the opposite boundary of said Section.

(4) Section and quarter Section corners as established by the Government survey, must, by law of Congress, stand as the true corners.

(5) Missing corners must be re-established at the identical point where the original posts were planted by the United States Deputy Surveyors.

(6) The legal presumption is, in the absence of any evidence to the contrary, that lost Section and quarter Section posts were originally established at the distance indicated in the field notes.

(7) Half quarter Section corners must be established equidistant from the Section and quarter Section posts.

(8) To divide a Section into quarters, a right line should be run from the quarter Section post in one Section line to the corresponding quarter Section post in the opposite Section line, even though one or more of these posts may have been established nearer to one Section corner than the other, thereby giving to one quarter Section more than 160 acres, and to another less than 160 acres.

(9) It is the duty of the surveyor to re-establish missing posts in the exact locality where they were originally placed in the Government survey. The proof of locality first sought to be obtained should be the witness trees, or any other means of identification contained in the field notes, and next, clear and unquestionable testimony of any kind. If no bearing trees, or other evidence in the field notes or elsewhere, exist, by which the locality of the missing posts can be identified or determined in the field, then the legal presumption is that the missing Section or quarter Section corners were originally established in conformity with the distances expressed in the field notes, and the surveyor should so re-establish them.

(10) Extinct quarter Section corners, except on fractional Section lines, when they cannot be identified, should be re-established equidistant between the Section corners, in a right line between the nearest noted "line trees" each side of it, if there are any; but if none are found, then in a right line between the Section corners. Extinct quarter Section posts, on Section lines which close on the North and West boundaries of Townships, should be re-established,

according to the original measurement thereof, at 40 chains from the last interior Section corner.

(11) Extinct Section corners may be re-established by running a right line between the nearest noted "line tree" North and South and East and West of the lost corner, if there be any such trees within the distance of the nearest quarter Section corners; but if no "line tree" be found, then between the nearest quarter Section or Section corners, and at the point of intersection of the two lines thus run, establish the Section corner, with new bearings to the nearest and most desirable objects.

(12) The quarter mile posts are not established in Government surveys, but are, by law, understood to be equidistant from the Section and quarter Section corners, and should be so established by the County Surveyor.

(13) It may be remarked, that where the measurement of any Section line by the County Surveyor does not correspond with the original measurement recorded in the field notes, lost corners should be re-established at proportionate distances from each other between the known corners.

Section 442 — WHERE SURVEYOR SHOULD START.—To retrace a line, a surveyor should start from some known corner called for by the field notes of the original survey. He should start from the nearest known corner. When he has found such a corner, and has identified it by descriptions in the field notes, or by the testimony of old residents in the neighborhood, it will make no difference whether the corner is on the Township line, or in a Township north or south of the line; for if it is a corner established by the original surveyor, when locating the Township line, or subsequently in subdividing a Township, and is the nearest known corner to the point which the private surveyor is endeavoring to retrace or relocate, it should be his starting point in making his survey.

Section 443.—MONUMENTS CONTROL COURSES AND DISTANCES.—It is a rule of surveying, always to

be applied to the retracing of Government lines and the re-locating of Government corners, that monuments, natural or artificial, control courses and distances. Consequently, whether the courses and distances correspond with the field notes or not, if the monuments called for by the field notes are found on the ground, they must control. It is only where no monuments, natural or artificial, can be found, that the courses and distances will control.

Section 444.—COMPLETION OF UNITED STATES SURVEY.—The Government survey of the public lands is made by running and marking the lines of the Township and Sections, and by marking the corners of the Township, Sections, and quarter Sections. It is not necessary that a whole Township be surveyed at one time, and often different parts of a Township are surveyed at different times. But no survey of any part is complete until the lines and corners about that part are run and established as required by the statute. Even after a principal meridian and base line have been established, and the exterior lines of the Township have been surveyed, neither the Sections nor their subdivisions can be said to have any existence until the Township is subdivided into Sections and quarter Sections by an approved survey. The lines are not ascertained by the survey, but they are created by it.

Spaulding's Table for Measurement of Logs.

Section 445.—LEGAL STANDARD OF LOG MEASUREMENT.—The State has by law adopted the table known as Spaulding's Table for the Measurement of Logs, as the legal standard of measurement in California. The law passed by the Legislature (Statutes of 1878) reads as follows: "There shall be but one standard for the measurement of logs throughout the State. The following table, known as Spaulding's Table for the Measurement of Logs, is hereby made the standard and table for the measurement of logs throughout the State. For the measurement of logs of any

greater length than indicated in the table set forth in Section 2 of this Act, the computation shall be made in accordance with table. All logs shall be measured at the small end and inside the bark, and the contents computed according to table. Allowance shall be made for rot, shake, or other defect in logs measured by this scale and under the provisions of this Act, so as to make the survey express the actual quantity of merchantable lumber in each log."

The Spaulding Table for the Measurement of Logs is as follows:

Length in feet.	Diam. 10	Diam. 11	Diam. 12	Diam. 13	Diam. 14	Diam. 15	Diam. 16	Diam. 17	Diam. 18	Diam. 19	Diam. 20
12....	38	47	58	71	86	103	121	141	162	184	207
13....	41	51	62	76	93	111	131	152	175	199	224
14....	44	55	67	82	100	120	141	164	189	214	241
15....	47	59	72	88	107	128	151	176	202	230	258
16....	50	63	77	94	114	137	161	188	216	245	276
17....	53	67	82	100	121	145	171	199	229	260	293
18....	57	70	87	106	129	154	181	211	243	276	310
19....	60	74	91	112	136	163	191	223	256	291	327
20....	63	78	96	118	143	171	201	235	270	306	345
21....	66	82	101	124	150	180	211	246	283	322	362
22....	69	86	106	130	157	188	221	258	297	337	379
23....	72	90	111	136	164	197	231	270	310	352	396
24....	76	94	116	142	172	206	242	282	324	368	414

Length in feet.	Diam. 21	Diam. 22	Diam. 23	Diam. 24	Diam. 25	Diam. 26	Diam. 27	Diam. 28	Diam. 29	Diam. 30	Diam. 31
12....	231	256	282	309	337	366	396	427	459	492	526
13....	250	277	305	334	365	396	429	462	497	533	569
14....	269	298	329	360	393	427	462	498	535	574	613
15....	288	320	352	387	421	457	495	533	573	615	657
16....	308	341	376	412	449	488	528	569	612	656	701
17....	327	362	399	437	477	518	561	604	650	697	745
18....	346	384	423	463	505	549	594	640	688	738	789
19....	365	405	446	489	533	579	627	676	726	779	832
20....	385	426	470	515	561	610	660	711	765	820	876
21....	404	448	493	540	589	640	693	747	803	861	920
22....	423	469	517	566	617	671	726	782	841	902	964
23....	442	490	540	591	645	701	759	818	879	943	1008
24....	462	512	564	618	674	732	792	854	918	984	1052

Length in feet.	Diam. 32	Diam. 33	Diam. 34	Diam. 35	Diam. 36	Diam. 37	Diam. 38	Diam. 39	Diam. 40	Diam. 41	Diam. 42
12....	561	597	634	673	713	755	798	843	889	936	984
13....	607	646	686	729	772	817	864	913	963	1014	1066
14....	654	696	739	785	831	880	931	983	1037	1092	1148
15....	701	746	792	841	891	943	997	1053	1111	1170	1230
16....	748	796	845	897	950	1006	1064	1124	1185	1248	1312
17....	794	845	898	953	1010	1069	1130	1194	1259	1326	1394
18....	841	895	951	1009	1069	1132	1197	1264	1333	1404	1476
19....	888	945	1003	1065	1128	1195	1263	1334	1407	1482	1558
20....	935	995	1056	1121	1188	1258	1330	1405	1481	1560	1640
21....	981	1044	1109	1177	1247	1321	1397	1475	1555	1638	1722
22....	1028	1094	1162	1233	1307	1384	1463	1545	1629	1716	1804
23....	1075	1144	1215	1289	1366	1447	1529	1615	1703	1794	1886
24....	1122	1194	1268	1346	1426	1510	1596	1686	1778	1872	1968

Length in feet.	Diam. 43	Diam. 44	Diam. 45	Diam. 46	Diam. 47	Diam. 48	Diam. 49	Diam. 50	Diam. 51	Diam. 52	Diam. 53
12....	1033	1086	1134	1186	1239	1293	1348	1404	1461	1519	1578
13....	1119	1176	1228	1284	1342	1400	1460	1521	1582	1645	1709
14....	1205	1267	1323	1383	1445	1508	1572	1638	1704	1772	1841
15....	1291	1357	1417	1482	1548	1616	1685	1755	1826	1898	1972
16....	1377	1448	1512	1581	1652	1724	1797	1872	1948	2025	2104
17....	1463	1538	1606	1680	1755	1831	1909	1989	2069	2151	2235
18....	1549	1629	1701	1779	1858	1939	2022	2106	2191	2278	2367
19....	1635	1719	1795	1877	1961	2047	2134	2223	2313	2405	2498
20....	1721	1810	1890	1976	2065	2155	2246	2340	2435	2531	2630
21....	1807	1900	1984	2075	2168	2262	2358	2457	2556	2657	2761
22....	1893	1991	2079	2174	2271	2370	2470	2574	2678	2784	2893
23....	1979	2081	2173	2273	2374	2478	2582	2691	2800	2911	3024
24....	2066	2172	2268	2372	2478	2586	2696	2808	2922	3038	3156

Length in feet.	Diam. 54	Diam. 55	Diam. 56	Diam. 57	Diam. 58	Diam. 59	Diam. 60	Diam. 61	Diam. 62	Diam. 63	Diam. 64
12....	1638	1700	1763	1827	1893	1960	2028	2098	2169	2241	2315
13....	1774	1841	1909	1979	2050	2123	2197	2272	2349	2427	2507
14....	1911	1983	2056	2131	2208	2286	2366	2447	2530	2614	2700
15....	2047	2125	2203	2283	2366	2450	2535	2622	2711	2801	2893
16....	2184	2266	2350	2436	2524	2613	2704	2797	2892	2988	3086
17....	2320	2408	2497	2588	2681	2776	2873	2972	3072	3174	3279
18....	2457	2550	2644	2740	2839	2940	3042	3147	3253	3361	3472
19....	2593	2691	2791	2892	2997	3103	3211	3321	3434	3548	3665
20....	2730	2833	2938	3045	3155	3266	3380	3496	3615	3735	3858
21....	2866	2974	3085	3197	3312	3429	3549	3671	3795	3921	4051
22....	3003	3116	3232	3349	3470	3592	3718	3846	3976	4108	4244
23....	3139	3258	3379	3501	3628	3756	3887	4021	4157	4295	4437
24....	3276	3400	3526	3654	3786	3920	4056	4196	4338	4482	4630

Length in feet.	Diam. 65	Diam. 66	Diam. 67	Diam. 68	Diam. 69	Diam. 70	Diam. 71	Diam. 72	Diam. 73	Diam. 74	Diam. 75
12....	2390	2467	2545	2625	2706	2789	2874	2960	3047	3135	3224
13....	2589	2672	2757	2843	2931	3021	3113	3206	3301	3396	3492
14....	2789	2878	2969	3062	3157	3253	3353	3453	3555	3657	3761
15....	2987	3083	3181	3281	3382	3486	3592	3700	3809	3919	4030
16....	3186	3289	3393	3500	3608	3718	3832	3946	4062	4180	4298
17....	3385	3494	3605	3718	3833	3951	4071	4193	4316	4441	4567
18....	3585	3700	3817	3937	4059	4183	4311	4440	4570	4702	4836
19....	3784	3906	4029	4156	4284	4415	4550	4686	4824	4964	5104
20....	3983	4111	4241	4375	4510	4648	4790	4933	5078	5225	5372
21....	4182	4316	4453	4593	4735	4880	5029	5180	....	....	....
22....	4381	4522	4665	4812	4961	5113	5269	5426	....	....	....
23....	4580	4728	4877	5031	5186	5345	5508	5673	....	....	....
24....	4780	4934	5090	5250	5412	5578	5748	5920	....	....	....

Length in feet.	Diam. 76	Diam. 77	Diam. 78	Diam. 79	Diam. 80	Diam. 81	Diam. 82	Diam. 83	Diam. 84	Diam. 85	Diam. 86
12....	3314	3405	3497	3590	3684	3779	3874	3970	4067	4165	4264
13....	3590	3688	3788	3889	3991	4094	4196	4301	4406	4512	4619
14....	3866	3972	4080	4188	4298	4408	4519	4631	4745	4859	4974
15....	4142	4256	4371	4487	4605	4723	4842	4962	5084	5206	5330
16....	4418	4540	4663	4786	4912	5038	5165	5293	5423	5553	5685
17....	4694	4823	4954	5085	5219	5353	5488	5624	5762	5900	6040
18....	4970	5107	5245	5385	5526	5668	5811	5955	6101	6247	6396
19....	5246	5391	5537	5684	5833	5983	6133	6282	6440	6594	6751
20....	5522	5675	5829	5983	6140	6298	6456	6616	6778	6941	7106

Length in feet.	Diam. 87	Diam. 88	Diam. 89	Diam. 90	Diam. 91	Diam. 92	Diam. 93	Diam. 94	Diam. 95	Diam. 96
12.....	4364	4465	4566	4668	4771	4875	4980	5085	5192	5300
13.....	4727	4837	4946	5057	5168	5281	5395	5508	5624	5741
14.....	5091	5209	5327	5446	5566	5687	5810	5932	6057	6183
15.....	5455	5581	5707	5835	5964	6094	6225	6356	6490	6625
16.....	5818	5953	6088	6224	6361	6500	6640	6780	6922	7066
17.....	6182	6325	6468	6613	6759	6906	7055	7203	7355	7508
18.....	6546	6697	6849	7002	7156	7312	7470	7627	7788	7950
19.....	6909	7069	7229	7391	7554	7791	7885	8051	8220	8391
20.....	7273	7441	7610	7780	7951	8125	8300	8475	8653	8833

Section 446.—EXPLANATION OF TABLE.—The length of any log in feet will be found in the left-hand column of the table, and the diameter at the top of the page.

To find the number of feet of square-edged boards which a log will produce when sawed: Take the length of feet in left-hand column of the table, and its diameter in inches at the top of the page; trace the two columns of figures until they meet, and you have the required amount.

(A log which is 18 feet long and 21 inches in diameter gives at the right of the length, and directly under the diameter, 346 feet; and one 23 feet long and 18 inches in diameter, gives 310 feet.)

Logs longer than are given in this table can be easily measured by doubling any given length; for example, to find the number of feet, board measure, contained in a log 28 feet long by 19 inches in diameter, double the amount contained in a log 14 feet long, 19 inches in diameter, and you have the answer—428 feet. For a log 42 feet long, 19 inches diameter, multiply the amount contained in the table in a log 14 feet long by 3, and you have the amount; and so on to any length or size.

Each size log has been scaled so as to make all that can be practically sawed out of it, if economically sawed, each log to be measured at the top or small end, inside of the bark, and, if not round, to be measured two ways, at right angles, and the difference taken for the diameter. Where there are any known defects the amount deducted should be agreed upon by the buyer and seller, and no fraction of an inch to be taken into the measurement.

Searchers of Records.

Section 447.—ABSTRACTS OF TITLE.—An abstract of title is a condensed history of the title to the land, consisting of a synopsis or summary of the material portions of all the conveyances of record, of whatever kind or nature, which in any manner affect the land, or any estate or interest in the land, together with a statement of all liens,

charges, or liabilities to which the property may be subject, and of which it is in any way material for purchasers to be apprised. The object of the abstract is to enable the purchaser, or his attorney, to pass more readily on the sufficiency of the title. Therefore, a complete abstract should show whatever appears of record which concerns the sources of the title and its present condition. The descent and line of the title should be clearly traced out, and all encumbrances and liens of every sort, and all adverse claims, and the material parts of all patents, deeds, wills, judicial proceedings, and other records or documents which touch the title.

Section 448.—SEARCHERS OF RECORD.—From the necessity of having an abstract of record of the title to land, and the volume and extent of the records themselves, has grown that class of expert searchers known as abstracters, or searchers of record, whose business it is to prepare in a condensed and convenient form the data from which it can be determined whether the title is good or bad, or free from encumbrance, and if encumbered at all, the character of the encumbrance. So important is their work, and so much depends upon the accuracy and fidelity of the abstracts they furnish, that it is to be expected by those who engage in the business of furnishing abstracts that any errors or omissions resulting in damages will incur a liability on their part to their patrons.

Section 449.—LIABILITY OF SEARCHERS OF RECORD.—One who holds himself out to the world as an examiner of titles, and who undertakes to furnish correct abstracts of title, is bound to exercise skill and care in making the examination, and in preparing the abstract, and is liable in damages for a failure to exercise that duty. Persons engaged in the business of making abstracts of title occupy a relation of confidence towards those employing them, which is second only in the sacredness of its nature

to the relation which a lawyer sustains to his client. Searchers of record consult the evidences of ownership, and become familiar with the chains and histories of title. They handle private title papers, and become aware of whatever weaknesses or defects may exist in the legal proceedings through which the ownership of real property is secured. And the courts have said, that they should be held to a strict responsibility in the exercise of the trust and confidence which are necessarily reposed in them.

Section 450.—TO WHOM LIABLE.—The liability of a searcher of records for want of skill or ordinary care and diligence is only to the party employing him. An action for damages for errors or omissions in an abstract of title cannot be sustained by a third person acting upon the faith of the correctness of the abstract, as there is no contract between him and the abstracter. The abstracter knows that his records are to be seen, and titles to be made in reliance upon them, but he is not bound to know that his certificate is for the use or reliance of any but the person who receives it, nor can it be assumed that he gives it for any other use. He contracts with the person who requests and pays for it, to give a certificate which shall state the facts; but he enters into no relation of contract or duty in respect to it with any other person; and, if another relies upon it to his injury, he cannot recover damages against the abstracter, because the latter assumed no duty for his protection. A searcher of records is liable for his negligence only to the person who requests and pays for the certificate of search. He is not liable to the grantee of the person who employed him, as there was no contract between them. A searcher of records, employed by the owner to prepare an abstract of title for the purpose of procuring a loan, is not liable in damages to the lender, for a loss caused by mistake in the abstract, there being no contract between him and the lender. It is a general rule that a searcher of records is liable for damages, because of his negligence or mistake, only to his immediate

employer, and not to the latter's assigns, vendees, or devisees, nor to any third person between whom and himself there is no contract relation.

Section 451.—LIABILITY FOR MISTAKE.—A searcher of records, giving a certificate of title, is liable to his employer for any mistake arising from want of due care or diligence, or from ignorance of his business.

Section 452.—LIABILITY FOR OMITTING ENCUMBRANCE.—If a searcher of records undertakes to furnish a purchaser of land with a full abstract of title, he is liable in damages for his negligence in carelessly omitting from the abstract any mention of a particular encumbrance, by which the purchaser is put to additional expense to perfect his title.

Section 453.—MARGINAL REFERENCE IN RECORD BOOK.—When a searcher of records undertakes to make a complete abstract of title, he takes the obligation upon himself to make a full and true search and examination of all the records relating to the land, and to note in the abstract accurately every transfer, conveyance, or other instrument of record in any way affecting the title. He is not required to give any opinion as to the legal effect of any of the instruments, and just how full a description of them he shall give is, to a certain extent, a matter for himself to decide; but in so far as he assumes to describe the recorded instruments, he is required to make his descriptions accurate. The record, and not a marginal reference to it by the Recorder, nor an index reference to the instrument, is what determines the character and legal effect of the instrument; and the duty of the searcher of records is not fulfilled by merely assuming the accuracy of a marginal reference, without examining the instrument itself. In failing to examine the record of the instrument itself, the searcher is guilty of negligence. So, in a case where a partial release of a mortgage was recorded, and a register of deeds, in his reference to it on the margin of the record of

the mortgage erroneously made the entry "Satisfied" (with a reference to the book and page where the release was recorded), when in fact it should have been "Partially satisfied," and the searcher, in making up the abstract, relied upon this marginal entry entirely, supposing it to be correct, and did not examine the contents of the instrument of release itself, and the party procuring the abstract was afterwards compelled to pay the mortgage; it was held by the court that the searcher was guilty of negligence, and was liable for whatever the party had been compelled to pay.

Section 454.—OMITTING JUDGMENT AND SALE.

—If a searcher of records, employed by a purchaser to make an abstract, omits to note the fact of a judgment and sale of the land for taxes, of which the purchaser is ignorant until the time for redemption has expired, whereby he is caused to pay out money to remove the cloud from his title, the abstracter is liable in damages to the purchaser for the sum paid out by him.

Section 455.—INCORRECT REPORT OF QUANTITY OF LAND CONVEYED.—If a searcher of records incorrectly reports in the abstract the quantity of land previously conveyed, he is liable in damages to the person who employed him and relied upon the information in purchasing the land.

Section 456.— MEASURE OF DAMAGES.—The damages suffered must be actual damages. The law will not compel a searcher of records, even though he has been guilty of inexcusable negligence or ignorance, in preparing the abstract, to pay any damages by way of punishment. The person who employed him is entitled to the actual money loss, by reason of the negligent act or omission, and that is all.

Section 457.—WHEN SUIT FOR DAMAGES MUST BE COMMENCED.—In California, a suit against a

searcher of records for damages must be commenced within two years after the delivery of the defective abstract, or it is barred by the statute of limitations.

Section 458.—SALE OF GOOD WILL OF ABSTRACTING BUSINESS.—Section 1674 of the Civil Code of California, providing that one who sells the good will of a “business” may agree with the buyer to refrain from carrying on a similar “business,” is broad enough to include, and does include, the business of abstracting.

Notary Public.

Section 459.—DUTIES OF NOTARY.—The duties of a Notary Public are prescribed by law, and are varied and important. In business affairs, the taking of acknowledgments to deeds, mortgages, leases, and other instruments, constitutes the greater and most important part of a Notary’s work. His duties, however, extend to a number of other matters. He is required, when requested, to demand acceptance and payment of foreign, domestic, and inland bills of exchange, or promissory notes, and protest the same for non-acceptance and non-payment; he may take acknowledgment or proof of powers of attorney, mortgages, deeds, grants, transfers, and other instruments of writing executed by any person; he may take depositions and affidavits, and administer oaths, to be used before any court, judge, officer, or board in this State. He is required to keep a record of all official acts done by him; to keep a record of the parties to every instrument acknowledged or proved before him, with the date and character of the instrument; and when requested, and upon payment of his fees, he must make and give a certified copy of any record in his office.

Section 460.—NUMBER OF NOTARIES.—The governor may appoint and commission such number of notaries public for the several counties and cities and counties of this State as he shall deem necessary for the public convenience,

except that in cities and counties of the second class the number shall not exceed one hundred.

Act of the Legislature, approved April 18, 1911.

Section 461.—BOND OF NOTARY.—Every Notary in California must give an official bond in the sum of \$5000, which must be approved by the Judge of the Superior Court, of his county, and recorded as other official bonds of county officers.

Section 462.—LIABILITY OF NOTARY.—The law provides that for the official misconduct or neglect of a Notary Public, he and the sureties on his official bond are liable to the parties injured for all the damages sustained.

Political Code, Section 801.

Section 463.—WHAT ACTS COVERED BY OFFICIAL BOND.—The condition of a bond of a Notary Public being, that he will "well and truly perform and discharge the duties of a Notary Public according to law," this embraces every act which he is authorized or required by law to do in virtue of his office. By accepting the office, a Notary contracts with those who employ him that he will perform the duties of the office with integrity, diligence, and skill. He gives his bond to indemnify those who shall suffer by the unfaithful or unskilful performance of his duty. Before a Notary and his bondsmen can be held liable for damages, it is necessary to determine whether the act done or not done was or not authorized by law, was or not incumbent upon him, was or not required of him, whether he was directed to do it, whether he has failed to discharge the duty, and whether injury has been sustained. Where a Notary does a thing which the law does not authorize him to do, although he does it in his capacity of Notary Public, his bondsmen are not responsible for his act. Notaries and their sureties are liable only to the persons who have employed the Notary, and are only liable to those who suffer injury on account of the Notary's failure to perform the duty incumbent upon him or required by law.

Section 464—LIABILITY OF SURETIES ON OFFICIAL BOND.—The surety on a Notary's official bond is only bound for such acts of his as the law authorizes or requires him to do in his official capacity. By signing the bond, the surety tells all who may need the services of a Notary: "You can go with security to this Notary; I assure you that he is a competent officer; that he will well and faithfully discharge and perform all the duties imposed upon him by law; and if he fails in doing so, I will be responsible to you for losses sustained." If, therefore, a person calls on a Notary for the performance of a duty incumbent upon him, and the Notary fails or neglects his duty, and injury is suffered, the surety is liable to the party injured. A surety cannot be held liable because the Notary has done acts which the law did not authorize or compel him to perform, and which were therefore not incumbent upon him. The sureties upon the official bond of a Notary Public are only liable for damages occasioned by his negligence or misconduct in the line of his official duty.

Section 465.—PREMATURE PROTEST OF PROMISSORY NOTE.—In case of a promissory note falling due, according to its face, upon Sunday, a Notary cannot present it for payment, nor make protest, on the preceding Saturday. The following Monday is the proper date for presentment and protest, unless that is also a legal holiday, when the next would be the proper day. Sunday, not being a legal day for exacting payment, cannot be computed, except when it is an intermediate day. To do so would make another contract for the parties, and by requiring payment on Saturday would compel the obligation to be met before the contract time for its performance had arrived. The act of a Notary in wrongfully protesting a promissory note before it is due gives a right of action against him for damages, and against his bondsmen, in favor of the injured party. For the Notary is presumed to know the wrongful character of the act, and that, in the trading community, the protest of a note is likely to impair the maker's credit.

If lawfully protested, the maker cannot complain; but he can complain, and justly so, if presentment and protest are made prematurely, before the law authorizes the acts.

Section 466. — FALSE CERTIFICATE TO ACKNOWLEDGMENT.—The sureties on the official bond of a Notary are liable for the full amount of a mortgage purchased in reliance on the genuineness of the Notary's certificate of acknowledgment, where the certificate is in fact false and the mortgage a forgery, and where the purported maker was solvent and able to pay the mortgage debt. When a Notary certifies that the mortgagor duly acknowledged the execution of a mortgage, which in fact is a forgery, the measure of damages, in a suit against the Notary or his sureties, brought by one who has parted with value on the face of such certificate, is the amount which would be the value of the mortgage if genuine. The value of the mortgage depends not merely upon the value of the mortgaged property, but also on the solvency of the mortgagor. When it appears, in such a suit for damages, that the plaintiff, had the mortgage been genuine, would have been able to collect the whole amount named therein, he is entitled to recover that amount from the Notary or his sureties, without regard to the value of the mortgaged property or the interest of the mortgagor in the property. If it should appear that the mortgage, if valid, could not be collected and would not be worth anything, then the plaintiff would not be entitled to damages, because it would not be shown that he had suffered any injury. But whatever value was shown, if the mortgage were valid, could be recovered against the Notary and his sureties.

Section 467. — NOTARY CANNOT AMEND CERTIFICATE.—When an acknowledgment has been made, before a Notary, the party making it has done all that the law requires to make the instrument his act and deed. The embodiment of the fact of acknowledgment, in the form of the certificate prescribed by law, devolves upon the Notary, and not upon the party making it. And if the Notary

blunders in certifying to an acknowledgment duly made, or if he makes a defective or false certificate, he cannot alter or amend it; because, after taking the acknowledgment and delivering the return, his functions cease, and he is discharged from all further authority. The Superior Court, and not the Notary, has power to correct a defective certificate of acknowledgment.

Section 468.—NOTARY'S KNOWLEDGE OF PARTY ACKNOWLEDGING INSTRUMENT.—A Notary is bound to know the person acknowledging an instrument before him, or, if he is not personally acquainted with him, he is bound to have the person's identity established by competent proof. If he knows the person, he may so state in his certificate of acknowledgment; if he does not know him personally, he may state in his certificate of acknowledgment the proof presented to establish his identity. When a Notary Public, in taking and certifying an acknowledgment to a mortgage, neglected to state in his certificate that the party acknowledging the instrument was known to him, or was identified by the testimony of a witness examined by him for that purpose, the Supreme Court of California held that the Notary was guilty of gross negligence, and that he and his bondsmen were responsible to the party injured for the damages resulting from his negligence. The Court said: "Plaintiff loaned to one Dupuy a sum of money, taking as security a mortgage on a lot in San Francisco. The mortgage was acknowledged by Dupuy before defendant Finlay, who was a Notary Public. The mortgage used was an ordinary printed form, having a certificate of acknowledgment in blank, in which was inserted, in the hand of one Sanders, who acted in the transaction as attorney for both mortgagor and mortgagee, the name of the mortgagor and the date of the acknowledgment. To this certificate the Notary affixed his signature and seal, but omitted to state either that the party acknowledging was known to him, or was identified by the testimony of a witness examined for that purpose. In consequence of that omission, the record of the mortgage was

held not to impart notice to subsequent encumbrancers. Plaintiff's lien was postponed in favor of a later mortgage, which exhausted the entire property, and Dupuy being insolvent, the debt was lost. Plaintiff now seeks to recover, on the bond of the Notary, the damages suffered by the negligent and unskilful performance of an official act. The purpose of a certificate of acknowledgment is to entitle the deed to be recorded, and to be admitted in evidence without further proof. The certificate furnished was utterly worthless for either purpose. This neglect is not excused by the fact that the certificate had been partially filled by the attorney for the grantee. The certificate, upon its face, is unfinished; the date and the name of the grantor had been inserted, leaving it for the Notary to insert his knowledge or the evidence received of the identity of the party making the acknowledgment. If the Notary read the certificate before signing it, this omission must have been known to him; if he did not, he is equally guilty of negligence, for an officer who affixes his official signature and seal to a document, without examining it to find whether the facts certified are true, can scarcely be said to faithfully perform his duty according to law." (Decided by the Supreme Court of California in the case of *Fogarty vs. Finlay*, which decision is printed in Volume 10 of the California Reports, page 239.)

Section 469.—PARTY INTRODUCED TO NOTARY.

—The acknowledgment of an instrument must not be taken, unless the Notary taking it knows, or has satisfactory evidence, on the oath or affirmation of a creditable witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument. A Notary has no right, in disregard of this plain provision of the law, to certify that he knows a person whom he does not know, on the mere introduction of a third party; and if he does so, and a loss results, he renders himself and his sureties liable to make good the loss.

Civil Code, Section 1185.

Section 470.—MISAPPROPRIATION OF MONEYS.

—As it is no part of the official duty of a Notary to receive money from or for anybody, his sureties are not liable for money fraudulently obtained and retained by him. So, if a Notary Public, who is also a real estate agent and engaged in negotiating loans, by false representations procures money upon forged mortgages, and then retains the money, his sureties are not liable. The sureties upon an official bond are not sureties for the general good behavior of the officer. They are responsible only for his official misconduct or neglect. As stated, it is no part of the duty of a Notary Public to receive money from or for anybody. It is misconduct, but not official misconduct, for a Notary to fraudulently obtain money in the manner stated. He does not receive any money in his official capacity. The sureties on his official bond are not liable for such misconduct, because it is only against his official misconduct that the sureties consent to indemnify persons injured by him.

Section 471.—TAKING OATH OVER TELEPHONE.

—The general rule is that a Notary Public cannot act as such outside of the county for which he is appointed. A Notary of one county of California is not authorized to administer an oath outside of the county for which he is appointed.

A party taking an oath before a Notary should appear in person; and it has been decided that an affidavit on attachment sworn to over the telephone before a Notary Public for Kern County, the affiant at the time being in the County of Los Angeles, was void, and an attachment issued thereon must be released.

(Decided by the California Court of Appeals, in the case of Fairbanks, Morse & Co. vs. Getchell, which decision is printed in Volume X of Appellate Decisions, page 714.)

Section 472.—FEES OF NOTARY.—The fees of Notaries allowed by law are as follows: For drawing and copying every protest for non-payment of a promissory note,

or for the non-payment or non-acceptance of a bill of exchange, draft, or check, two dollars; for drawing and serving every notice of non-payment of a promissory note, or of the non-payment or non-acceptance of a bill of exchange, order, draft, or check, one dollar; for recording every protest, one dollar; for drawing an affidavit, deposition, or any paper other than those above mentioned, for each folio, thirty cents; for taking an acknowledgment or proof of a deed or other instrument, to include the seal and the writing of the certificate, for the first two signatures, one dollar each, and for each additional signature, fifty cents; for administering an oath or affirmation, fifty cents; for every certificate, to include writing it, and the seal, one dollar.

Political Code, Section 798.

Carriers of Freight.

Section 473.—FREIGHT AND FREIGHTAGE.—

Property carried is called freight; the compensation to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

Section 474.—CARE AND DILIGENCE REQUIRED OF CARRIERS.—A carrier of property for compensation must use at least ordinary care and diligence in the performance of all his duties.

Section 475.—DIRECTIONS TO CARRIERS.—When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee. But the consignor may give special directions to the carrier to receive no orders of any kind from the consignee inconsistent with his own.

Civil Code, Section 2116.

Section 476.—DELIVERY OF FREIGHT.—A carrier of freight must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place. If there is no usage to the contrary at the place of delivery, freight must be delivered as follows: (1) If carried upon a railway owned or managed by the carrier, it may be delivered at the station nearest to the place to which it is addressed; (2) If carried by sea from a foreign country, it may be delivered at the wharf where the ship moors, within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or, (3) In other cases, it must be delivered to the consignee or his agent, personally, if either can, with reasonable diligence, be found.

Civil Code, Section 2119.

Section 477.—OBLIGATIONS OF CARRIER WHEN FREIGHT NOT DELIVERED.—If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the freight in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post-office. If the consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse, on storage, on account of the consignee, and giving notice thereof to him.

Civil Code, Sections 2120, 2121.

Section 478.—BILL OF LADING.—A bill of lading is an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage, and agreeing or directing that the freight be delivered to

the order or assigns of a special person at a special place. All the title to the freight which the first holder of a bill of lading had when he received it, passes to every subsequent indorsee in good faith and for value, in the ordinary course of business. A bill of lading represents the property for which it has been given, and by its indorsement or by delivery without indorsement the property in the goods may be transferred, when such is the intent with which the indorsement or delivery is made. By the rules of commercial law, bills of lading are regarded as symbols of the property therein described, and the delivery of such bill, by one having an interest in or a right to control the property, is equivalent to a delivery of the property itself. A consignor may effectuate a sale or pledge of the property consigned by delivery of the bill of lading to the purchaser or pledgee, as completely as if the property were in fact delivered. Bills of lading are choses in action, and instruments of this character may be transferred for a valuable consideration by delivery only. The indorsee for value of a bill of lading which has been delivered to him may bring an action in his own name for the goods. And generally in all cases where the shipper having the right of property indorses and delivers the bill of lading, the indorsee may maintain an action for the goods represented by such bill of lading in his own name. A person purchasing a draft drawn by the shipper of the goods, with a bill of lading accompanying it, has a special property in the goods covered by the bill of lading; and usually in the case of a time draft this special property vests in the purchaser of the draft as security for its acceptance. It may be, if so agreed between the shipper and the purchaser of the draft, that the purchaser will have a right to retain the bill of lading, and thus retain his special property in the goods shipped, not only for the acceptance but for the payment of the draft. When a bill of lading is made to the "bearer," or in equivalent terms, a simple transfer, by delivery, conveys the same title as an indorsement.

Civil Code, Sections 2126, 2127, 2128.

Section 479.—NUMBER OF BILLS OF LADING.—

A carrier must subscribe and deliver to the consignor, on demand, any reasonable number of bills of lading, of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so, the consignor may take the freight from him, and recover from him, besides, all damages he sustains.

Civil Code, Section 2130.

Section 480.—CARRIER EXONERATED BY DELIVERY.—

A carrier is exonerated from liability for freight by delivering it in good faith, to any holder of a bill of lading, properly indorsed, or made in favor of the bearer. When a carrier has given a bill of lading, he may require its surrender, or a reasonable indemnity against claims thereon, before delivering the freight.

Civil Code, Sections 2131, 2132.

Section 481.—WHEN FREIGHT MUST BE PAID.—

A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he cannot do so until he is ready to deliver the freight to the consignee. The carrier may demand payment in advance, subject to a liability to refund it if not earned.

Civil Code, Section 2136.

Section 482.—CARRIER'S LIEN.—A carrier has a lien for freightage and for services rendered at request of shipper or consignee in and about the transportation, care and preservation of the property, and he also has a lien for money advanced at request of shipper or consignee to discharge a prior lien.

Act of the Legislature, approved April 19, 1909.

Section 483.—WHO MUST PAY FREIGHT.—The consignor of freight is presumed to be liable for the freightage; but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows

the consignee to take the freight, he cannot afterward collect the freightage from the consignor. The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it. If a part of the freight is accepted by a consignee, without a specific objection that the remainder is not delivered, the freightage must nevertheless be apportioned and paid as to that part. If a consignee voluntarily receives freight at a place short of the one agreed upon for delivery, the carrier is entitled to a just proportion of the freightage, according to the distance. If the carrier, being ready and willing, offers to carry the freight to the destination originally intended, he is entitled to the full freightage.

Civil Code, Sections 2137, 2138, 2139, 2141, 2142.

Section 484.—FREIGHT CARRIED FARTHER THAN AGREED.—If freight is carried beyond the destination agreed upon by the parties, the carrier is not entitled to any additional compensation.

Civil Code, Section 2143.

Section 485.—OBLIGATION TO ACCEPT FREIGHT.
—It is a general rule that a common carrier must, if able to do so, accept and carry whatever freight is offered. The freight must be offered at a reasonable time and place, and be of a kind that the common carrier undertakes or is accustomed to carry. For if the freight offered is not of the kind which the carrier has undertaken to carry, or if it be a dangerous shipment, another rule may prevail. A common carrier is not bound to receive goods which are so defectively packed that their condition will entail upon the company extra care and extra risk; nor dangerous articles, such as nitroglycerine, dynamite, gunpowder, aquafortis, oil of vitriol, matches, etc. It is optional with the carrier to accept such freight; it may accept or reject it, when offered; and when accepted at all, the carrier may insist upon such limitations of its liability as it sees fit.

A common carrier may not relieve itself from any liability imposed upon it by law under the dictates of public policy; but, on the other hand, upon any question of private right, or the right of private property, it may lessen the degree of responsibility which attaches to it as an insurer, by any contract not in itself unreasonable. Thus, the shipping receipt may lawfully exempt the carrier from liability from loss by fire, where inflammable or combustible articles of freight are offered for carriage.

Section 486.—AGREEMENTS TO LIMIT LIABILITY.—The obligations of a common carrier can only be limited by special agreement. General notice by the carrier is not sufficient, and a special contract with each shipper is required by the law. But a common carrier cannot be exonerated, even by special contract, from its liability for the gross negligence, fraud, or wilful wrongs of itself or servants. A consignor or consignee, by accepting a bill of lading, or written contract for carriage, with knowledge of its terms, assents to the rate of hire, and the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes is lost or injured, when the value of the property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same.

Civil Code, Section 2176.

Section 487.—GENERAL LIABILITY OF COMMON CARRIERS FOR LOSS.—Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable for loss or injury of the property from any cause whatever, except: (1) An inherent defect, vice, or weakness, or a spontaneous action, of the property itself; (2) The act of a public

enemy of the United States, or of this State; (3) The act of the law; or (4) Any irresistible superhuman cause. The first exception, inherent defects, includes decay of fruits, the diminution, leakage, or evaporation of liquids, and the spontaneous combustion of goods. In all these cases, where the negligence of the carrier does not co-operate in the loss, he will be excused. Live animals are also included in this exception, to whatever extent they injure themselves or one another, impelled by their inherent vices and propensities. A public enemy, the second exception, is one with whom the Nation or State is at open war, and pirates on the high seas, who are universally treated as the enemies of all mankind. By the act of the law, stated as the third exception, is meant the contingency of goods attached, or taken under execution, or other legal process. By the fourth exception, an irresistible superhuman cause, is meant some act of God, as where freight is destroyed by lightning, or volcanic eruption, or other cause over which human agency could have no control.

Civil Code, Section 2194.

Section 488.—LOSSES NOT WAIVED BY CONTRACT.—A common carrier cannot limit itself from liability in case of gross negligence, fraud, or wilful wrong. The excusable results flowing from the acts of God are those only which cannot be prevented by the interposition of human agency. In a suit against a railroad company for the freezing of potatoes while en route, this was held not to be a loss for which the company could claim immunity, under the limitation of liability clause in its contract with the shipper. Any movable object can be kept from freezing, and the freezing of any such articles cannot be excused as being an act of God. (Decided by the California District Court of Appeals in the case of Wood, Curtiss & Company vs. the Missouri Pacific Railway Company, which decision is printed in Volume II of California Appellate Decisions, No. 88, page 419.)

Section 489.—LIABILITY FOR DELAY.—A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

Civil Code, Section 2196.

Section 490.—SHIPMENT OF GOLD, PRECIOUS STONES, STATUARY, PICTURES, GLASS OR CHINAWARE.—A common carrier of gold, silver, platina, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk, or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon the receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt or the bill of lading.

Civil Code, Section 2200.

Section 490a.—ACCEPTING FREIGHT FOR PLACE BEYOND USUAL ROUTE.—If a common carrier accepts freight for a place beyond its usual route, it must, unless otherwise agreed, deliver the freight at the end of its route in that direction to some other common carrier carrying to the place of address, or connected with those who thus carry; and its liability ceases upon making such delivery. If freight addressed to a place beyond the usual route of the common carrier who first receives it is lost or injured, the carrier must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while the freight was in its charge, or it will be liable for the loss.

Civil Code, Sections 2201, 2202.

Section 491.—RAILROADS MUST FURNISH CARS.—Whenever cars are wanted, the shipper may apply in writing to the superintendent or agent of a railroad company,

indicating the point where the cars are to be sent, and how many are desired. The railroad company must furnish the cars, if the application be for 10 cars or less, in 5 days; if the application be for 10 and less than 50 cars, they must be furnished in 10 days; if the application be for 50 cars or more, they must be furnished in 15 days. If the application be for cars to carry perishable freight, the number of cars applied for must be furnished within 48 hours. The time will begin to run from the hour of seven o'clock A. M. of the next day following the day when the application for cars is received by the railroad company. The application for cars must state the number of cars desired, the kind of freight to be shipped, the point of destination, and the time and place at which they are desired. When cars are applied for, if they are not furnished, the railroad company becomes

- liable and immediately indebted to the party who applied, for the sum of five dollars per day for each car failed to be furnished, and in addition all actual damages the applicant may have sustained. When a person applies for cars, the railroad company has the right to demand a deposit of one-fourth of the amount of the freight charge. The cars, when furnished, must be loaded within forty-eight hours; and if not loaded within that time, six dollars per day must be paid the company for each car not used, besides the actual damage sustained by the company. The consignee must unload cars within forty-eight hours after delivery to him, and if he fails to do so he will be liable to the company in the sum of six dollars per day. The liability of either party is excused when failure to furnish, load, or unload cars, is caused by public calamity, strikes, washouts, acts of God, the public enemy, mobs, riots, wrecks, fires or accidents.

Act of the Legislature, approved April 20, 1909.

Letters of Credit.

Section 492.—WHAT IS A LETTER OF CREDIT.—

A letter of credit is a written instrument, addressed by

one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

Section 493.—HOW ADDRESSED.—A letter of credit may be addressed to several persons in succession.

Section 494.—LETTERS GENERAL OR SPECIAL.—A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons, by name or description, the letter is special. All other letters of credit are general. A letter of credit addressed to a particular person is limited to him, for the writer must be deemed to have granted it in reliance on his prudence and discretion in acting upon it. A general letter of credit gives to any person to whom it may be shown, authority to comply with its request, and by so doing, it becomes, as to him, of the same effect as though addressed to him by name. Several persons may successively give credit upon a general letter.

Section 495.—LIABILITY OF THE WRITER.—The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms. By giving the letter, the writer obliges himself to accept such bills or orders as may be drawn under it in good faith, and within the limits of the credit specified in the letter.

Section 496.—LETTER OF CREDIT MAY BE A CONTINUING GUARANTY.—If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but it is to be deemed a continuing guaranty.

Section 497.—WHEN NOTICE TO THE WRITER NECESSARY.—A letter of credit must by its terms express or imply the necessity of giving notice, or no notice

of credit obtained upon it will be necessary. The writer of a letter of credit is liable for credit given upon it without notice to him, unless it can be seen from the letter itself that notice to the writer was intended by the parties. Unless there is something in the nature of the contract or terms of the letter making acceptance or notice necessary as a condition of liability, neither is necessary to bind the writer.

Section 498.—CREDIT GIVEN MUST AGREE WITH TERMS OF LETTER.—The law of California provides, that if a letter of credit prescribes the persons by whom or the mode in which the credit is to be given, or the term of credit, or limits the amount, the writer is not bound except for transactions, which, in these respects, conform strictly to the terms of the letter.

Civil Code, Sections 2858, 2859, 2861, 2862, 2864, 2865.

Section 499.—INTENTION OF PARTIES.—In cases where doubt arises as to the real meaning of a letter of credit, the rule of law is that the terms of the letter will be liberally and reasonably construed. The intention of the parties is the essential thing to be ascertained. But words of doubtful meaning, or technical terms, or local expressions, used in a letter of credit, cannot be taken advantage of, to defeat the liability of one who signs and gives such a letter. True, it is a general rule, that the surety or guarantor should not be held beyond the precise stipulations of his contract, and he has a right to insist upon the exact performance of any condition inserted in the letter. But when the question is as to the meaning which shall be given to the terms used in the instrument, the law will always be found liberal and reasonable; for letters of credit are commercial instruments, generally drawn up by merchants in brief language, and often loose in their structure and aim; and to give the words of a letter of credit a nice and technical construction, would

not only defeat the intention of the parties in many instances, but render them too unsafe a basis to rely on for extensive credits, so often sought in the present active business of commerce throughout the world. Therefore, it is well to remember, that while parties will be held by the law to the terms of their contract, yet the law will not allow a person who advances money on the faith of a letter of credit, however loosely drawn, to suffer loss by any strained or technical construction of the language or directions contained in it.

Bills of Exchange.

Section 500.—NATURE OF BILLS OF EXCHANGE.

—A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money. A bill of exchange may give the name of any person in addition to the drawee, to be resorted to in case of need.

Section 501.—BILL IN PARTS OF A SET.—A bill of exchange may be drawn in any number of parts, each part stating the existence of the others, and all forming one set. An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it. Presentment, acceptance, or payment, of a single part in a set of a bill of exchange, is sufficient for the whole.

Civil Code, Sections 3171, 3172, 3173, 3174, 3175.

Section 502.—WHERE BILL OF EXCHANGE IS PAYABLE.—A bill of exchange is payable: (1) At the place where, by its terms, it is made payable; or, (2) If it specify no place of payment, then at the place to which it is addressed; or, (3) If it be not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot

with reasonable diligence be ascertained, presentment for payment is excused, and the bill may be protested for non-payment.

Civil Code, Section 3176.

Section 503.—WHEN BILL OF EXCHANGE MAY BE PRESENTED FOR ACCEPTANCE.—A bill of exchange may be presented by the holder to the drawee for acceptance, at any time before it is payable, and if acceptance is refused, the bill is dishonored. When a bill of exchange is payable at a specified time after sight, the drawer and indorsers are exonerated if it is not presented for acceptance within ten days after the time which would suffice, with ordinary diligence, to forward it for acceptance, unless presentment is excused.

Section 504.—HOW PRESENTMENT MUST BE MADE.—Presentment of a bill of exchange for acceptance must be made in the following manner, as nearly as by reasonable diligence is practicable: (1) The bill must be presented by the holder or his agent; (2) It must be presented on a business day, and within reasonable hours; (3) It must be presented to the drawee, or, if he be absent from his place of residence or business, to some person having charge thereof, or employed therein; and the drawee, on such presentment, may postpone his acceptance or refusal until the next day. If the drawee have no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, presentment for acceptance is excused, and the bill may be protested for non-acceptance. Presentment for acceptance to one of several joint drawers, and refusal by him, dispenses with presentment to the others. A bill of exchange which specifies a drawee in case of need must be presented to him for acceptance or payment, as the case may be, before it can be treated as dishonored.

Civil Code, Section 3186.

Section 505.—ACCEPTANCE MUST BE IN WRITING.—An acceptance of a bill of exchange must be made in writing, by the drawee or by an acceptor for honor, and may be made by the acceptor writing his name across the face of the bill, with or without other words. The holder of a bill of exchange, if entitled to an acceptance, may treat the bill as dishonored if the drawee refuses to write across its face an unqualified acceptance.

Section 506.—WHAT MAY BE TREATED AS SUFFICIENT ACCEPTANCE.—The holder of a bill of exchange may, without prejudice to his rights against prior parties, receive and treat as a sufficient acceptance: (1) An acceptance written upon any part of the bill, or upon a separate paper; (2) An acceptance qualified so far only as to make the bill payable at a particular place within the city or town in which, if the acceptance was unqualified, it would be payable; or, (3) A refusal by the drawee to return the bill to the holder after presentment, in which case the bill is payable immediately, without regard to its terms. The acceptance of a bill of exchange by a separate instrument binds the acceptor to one who, upon the faith thereof, has taken it for value. An unconditional promise, in writing, to accept a bill of exchange, is a sufficient acceptance, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration.

Civil Code, Sections 3195, 3197.

Section 507.— WHEN ACCEPTANCE MAY BE CANCELED.—The acceptor of a bill of exchange may cancel his acceptance at any time before the delivery of the bill to the holder, and before the holder has, with the consent of the acceptor, transferred his title to another person for value upon the faith of such acceptance.

Civil Code, Section 3198.

Section 508.—WHAT IS ADMITTED BY ACCEPTANCE.—The acceptance of a bill of exchange admits the

signature of the drawer, but does not admit the signature of any indorser to be genuine.

Section 509.—ACCEPTANCE OR PAYMENT FOR HONOR.—On the dishonor of a bill of exchange by the drawee, or, in case of a foreign bill, after it has been duly protested, it may be accepted or paid by any person, for the honor of any party to it. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor. The person accepting or paying for honor must write a memorandum upon the bill, stating for whose honor he accepts or pays, and must give notice to such parties, with reasonable diligence, of the fact that he has accepted or paid the bill. Having done so, he is entitled to reimbursement from the parties for whom he pays, and from all parties prior to them. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment, and notice of its dishonor by him must be given to the acceptor for honor, in like manner as to an indorser; after which the acceptor for honor must pay the bill. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee.

Civil Code, Sections 3203, 3204, 3205, 3206, 3207.

Section 510.—PRESENTMENT FOR PAYMENT.—If a bill of exchange is by its terms payable at a particular place, and is not accepted on presentment, it must be presented at the same place for payment. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment, when presentment for payment is necessary, and need not be presented elsewhere. If a bill of exchange, payable at sight or on demand, without interest, is not duly presented for payment within ten days after the time in which it could, with reasonable diligence, be transmitted to the proper place for such presentment, the drawer and indorsers are exonerated, unless such presentment is excused. The circumstances which will excuse

delay are such as occur through floods, or storms, or war, or pestilence, or famine, rendering travel or communication impossible. Mere delay in presenting a bill of exchange payable with interest, at sight or on demand, does not exonerate any party to it. There are certain other things which will also excuse both presentment and notice. The presentment of a bill of exchange for acceptance is excused if the drawee has not capacity to accept it; if, for instance, the drawee, at the time when presentment should be made, is insane, his capacity to make any contract is gone, and the law will not require presentment to him under such circumstances. Presentment of a bill of exchange for acceptance or payment, and also notice of its dishonor, are excused as to the drawer, if he forbids the drawee to accept or the acceptor to pay the bill; or if, at the time of drawing, he had no reason to believe that the drawee would accept or pay it.

Civil Code, Sections 3211, 3212, 3213, 3214, 3218, 3220.

Section 511.—FOREIGN BILLS.—A bill of exchange drawn and payable within the State is an inland bill. All others are called foreign bills of exchange.

Section 512.—PROTEST OF FOREIGN BILL OF EXCHANGE.—Notice of the dishonor of a foreign bill of exchange can be given only by notice of its protest. Protest must be made by a Notary Public, if with reasonable diligence one can be obtained; and if not, then by any reputable person, in the presence of two witnesses.

Protest must be made by an instrument in writing, giving a literal copy of the bill of exchange, with all that is written thereon, or annexing the original; stating the presentment, and the manner in which it was made; the presence or absence of the drawee or acceptor, as the case may be; the refusal to accept or to pay, or the inability of the drawee to give a binding acceptance; and in case of refusal, the reason assigned, if any; and, finally, protesting against all the parties to be charged.

A protest for non-acceptance must be made in the city or town in which the bill is presented for acceptance, and a protest for non-payment in the city or town in which it is presented for payment.

A protest must be noted on the day of presentment, or on the next business day; but it may be written out at any time thereafter.

The want of a protest of a foreign bill of exchange, or delay in making the same, is excused in like cases with the want or delay of presentment.

Notice of protest may be given by the Notary who makes the protest, and served as follows: (1) By delivering it to the party to be charged, personally, at any place; or, (2) By delivering it to some person of discretion at the place of residence or business of such party, apparently acting for him; or (3) By properly folding the notice, directing it to the party to be charged, at his place of residence, according to the best information that the person giving the notice can obtain, depositing it in the post-office most conveniently accessible from the place where the presentment was made, and paying the postage thereon.

If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party to it, in like manner as of an inland bill; but if any indorser expressly requires protest to be made, by a direction written on the bill at or before his indorsement, protest must be made, and notice of protest must be given to him and to all subsequent indorsers.

One who pays a foreign bill of exchange for honor must declare, before payment, in the presence of a person authorized to make protest, for whose honor he pays the same, in order to entitle him to reimbursement.

Civil Code, Sections 3227, 3228, 3229, 3230, 3233.

Section 513.—DAMAGES ALLOWED ON DISHONOR OF BILL OF EXCHANGE.—Damages are allowed, as a full compensation, for interest accrued before notice of dishonor, re-exchange, expenses, and all other

damages, in favor of holders for value only, upon bills of exchange drawn or negotiated within this State, and protested for non-acceptance or non-payment. The rate of damages allowed by the law of California, on dishonor of a foreign bill of exchange, is as follows: (1) If drawn upon any person in this State, two dollars upon each one hundred dollars of the principal sum specified in the bill; (2) If drawn upon any person out of this State, but in any of the other States west of the Rocky Mountains, five dollars upon each hundred dollars of the principal sum specified in the bill; (3) If drawn upon any person in any of the United States east of the Rocky Mountains, ten dollars upon each hundred dollars of the principal sum specified in the bill; (4) If drawn upon any person in any place in a foreign country, fifteen dollars upon each hundred dollars of the principal sum specified in the bill.

From the time of notice of dishonor and demand of payment, lawful interest is allowed upon the aggregate amount of the principal sum specified in the bill, and the damages mentioned in the preceding paragraph.

If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange.

If the amount of a protested bill of exchange is expressed in foreign money, damages are estimated upon the value of a similar bill at the time of protest, in the place nearest to the place where the bill was negotiated, and where such bills are currently sold.

Bank Checks.

Section 514.—NATURE OF BANK CHECKS.—In its essential features a bank check has been sometimes likened to a bill of exchange, but it is evident that there are very material differences between them. A bill of exchange must be presented for acceptance, and again for payment. A check is an order to pay the holder a sum of money at a bank, on the presentation of the check and demand of the

money; and no further notice is necessary, no acceptance is required or expected. It is well said that one radical difference between a check and a bill of exchange is, that the former need not be accepted, while the latter must be, in order to fix the liability on the drawee. It is requisite to a check that it be drawn on a bank or banker, and that it be payable on demand.

Section 515.—DELIVERY OF CHECK.—It is necessary that there should be delivery of a check before the payee can acquire any rights in it. The same rule applies to a check which applies to a note or to a bill of exchange. It is not valid unless it has been delivered to the payee.

Section 516.—NEGOTIABILITY.—A check is a negotiable instrument, when payable to "bearer," or to the "order" of a person.

Section 517.—POSSESSION OF CHECK.—The mere possession of a check will not justify a bank in making payment to the person in possession, without some identification, or some evidence of genuineness of the indorsement, if an indorsement is in question.

Section 518.—DRAWING ON ANTICIPATED FUNDS.—A depositor in a bank has a right to draw his check in the reasonable expectation that he will have sufficient funds, at the time of presentment, to meet it. Hence, insufficiency of funds, at the time the check is drawn, does not affect the holder's right to payment, if there are sufficient funds on hand when the check is presented.

Section 519.—CERTIFIED CHECK.—The certification of a check, when made before delivery, operates in favor of third parties simply as an assurance that it is genuine, and will be paid. The bank certifying it becomes bound. Beyond this, nothing is added to the legal force or effect of

the check. A bank, by certification of a check, becomes entitled to charge the amount thereof to the account of the drawer at the time of certification, thus appropriating to the payment of the check the necessary amount of money from the funds on deposit to the credit of the drawer. By certification of a check the bank enters into an absolute undertaking to pay it when presented, within the period of limitation of actions.

Section 520.—PRESENTMENT AND DEMAND FOR PAYMENT.—A person who takes a check does so with the legal obligation to present it at the bank for payment, within a reasonable time. A check is not designed for circulation, but for immediate presentment for payment, and if not thus presented within a reasonable time according to the circumstances, the indorsers will be released from liability on it. A check must be presented for payment with all the dispatch and diligence consistent with the transactions of commercial concerns.

Section 521.—STOPPING PAYMENT.—The drawer of a check may stop payment, by notifying the bank on which it is drawn that payment is stopped and giving instruction not to pay it. In such case, it is the duty of the bank to refuse payment, and give its reasons for so doing, leaving the drawer and the holder to settle the difficulty between them. But where the check has been certified, it cannot be countermanded by the drawer, because it has passed beyond his control. A check cannot be countermanded by the drawer after it has been presented at the bank for payment and has been accepted.

Section 522.—PAYMENT OF CHECK BY MISTAKE.—A bank is bound to know the state of its depositor's account; and if it makes a mistake in this respect it must abide the consequences. Banks are required, and for their own safety are compelled, to know at all times the balance to the credit of each individual depositor, and they

take and pay checks at their own risk and peril. If, from negligence or inattention to its own affairs, a bank improvidently pays when the account of a customer is not in condition to warrant it, or if, by mistake, a check is paid when the drawer has no funds in bank, it must look to the customer for rectification or repayment, and not to the party to whom the check was paid.

Section 523.—RIGHTS AND LIABILITIES OF INDORSERS.—The rights and liabilities of indorsers are the same as to all negotiable instruments. Checks, bills of exchange, and promissory notes, with respect to indorsers, are considered according to the same rule. For the law as to indorsers, their rights and liabilities, see the subject of "Promissory Notes," where the subject is fully treated.

Section 524.—REFUSAL TO PAY.—A check being payable immediately and on demand, the holder can only present it for payment, and the bank can fulfill its duty to the depositor only by paying the amount demanded. The holder has no right to demand from the bank anything but payment of the check, and the bank has no right as against the drawer, to do anything but pay it. If the bank refuses to pay the check, when there are funds sufficient on deposit, the holder has recourse against the maker and the indorsers, and the maker, in turn, has a right to sue the bank.

Section 525.—LIABILITY OF BANK TO DEPOSITOR FOR REFUSAL TO PAY CHECKS.—Where there is money on deposit in a bank, sufficient to pay checks drawn by the depositor, and the bank refuses to pay the checks, the liability of the bank is only for the money deposited and interest from the date of refusal to pay. The bank is not liable in damages for loss of credit, or sacrifice of goods, or expenses of litigation, or other injuries sustained.

Smith's Cash Store, of San Francisco, sued the First National Bank of San Francisco for \$100,000 damages, the plaintiff alleging that it deposited with the bank on a certain date the sum of \$4,000, and drew checks against this deposit

aggregating \$3,679.55, which the bank failed and refused to pay; and that plaintiff was injured and damaged in its credit, was compelled to sell goods at a sacrifice, had to make an assignment of property, and was compelled to pay out large sums in litigation; all by reason of the bank's refusal to pay the checks. The Supreme Court decided against the plaintiff, on the ground that it was not entitled to damages at all, and that it could only recover the money deposited. The decision says: "It is well settled here that the relation between a general depositor and the bank in which his deposit is made is simply that of debtor and creditor. The moneys deposited immediately become the property of the bank, and the latter becomes the debtor of the depositor for the amount of the deposit. The original and every subsequent deposit by the customer is in strict legal effect a loan by the customer to the bank, and every payment by the bank to or on account of the customer is a repayment of the loans to that extent. Wherefore it follows that the customer can never hold or charge the bank as a trustee, quasi trustee, factor, or agent. The money placed in the custody of a banker is, to all intents and purposes, the money of the banker, to do with it as he pleases; he is guilty of no breach of trust in employing it; he is not answerable to the principal if he puts it into jeopardy, if he engages in a hazardous speculation; he is not bound to keep it, or deal with it as the property of his principal; but he is, of course, answerable for the amount, because he has contracted, having received that money, to repay to the principal, when demanded, a sum equivalent to that paid into his hands." The defendant in this case was not liable in damages for a conversion of plaintiff's money to its own use; for the money deposited by plaintiff became, by such deposit, the property of defendant, and the latter could not convert its own money. (Decided by the Supreme Court of the State of California, in the case of *Smiths' Cash Store vs. First National Bank of San Francisco*, which decision is printed in Volume 31 of *California Decisions*, No. 1686, page 307.)

Section 526.—FORGED CHECKS.—If a bank pays a forged check, whether the forgery be in the amount of the check, or in the signature, it cannot deduct the amount so paid from the depositor's account. A bank is bound to know the handwriting and the signature of its depositors, and it takes all the risk of paying a check which is a forgery. If it does pay a forged check it will have to stand the loss.

It is the duty of the depositor to promptly notify the bank of the discovery of a forged check, and negligence on the part of the depositor in this respect may be used by the bank as a defense, if sued for money which it has paid out on forged checks. Where a bank balances a depositor's pass book, containing a debit against him for a payment made on a forged check, and returns the book to him at the same time, this constitutes a statement of his account, making it his duty to examine it within a reasonable time, and to return it to the bank without unreasonable delay, with notice of his objections to it. Where, in any case, the depositor gives notice to the bank of the forgery as soon as possible after detecting it, and without unreasonable delay in the examination of his accounts, the forgery of his check is wholly inoperative, and gives no rights to the bank which pays it; on the contrary, the depositor, if the bank insists on debiting his account with the amount paid out on a forged check, can sue the bank and recover the money from it.

Section 527.—FORGED INDORSEMENTS.—The drawer of a check is not presumed to know the signature of the payee. The bank must at its peril determine the genuineness of the signature of indorsers. When, therefore, a bank returns to its depositor a check, as evidence of a payment made by his direction, he has the right to assume that the bank has ascertained the indorsement upon it to be genuine. A bank is bound to satisfy itself of the genuineness of indorsements on a check made payable to a certain person or order, and must alone bear the responsibility of determining that question.

Section 528.—GARNISHMENT OF MONEY ON DEPOSIT.—A check is not an assignment of the funds upon which it is drawn, and there is no obligation of a bank to the holder of a check of a depositor until the check is presented for payment. The delivery of a check does not operate as an assignment of the funds drawn upon; and where the funds are garnished as those of the drawer, before the check is presented for payment, the garnishment will hold. An ordinary uncertified check upon a general bank account is neither a legal nor an equitable assignment of any part of the sum standing to the credit of the depositor, and confers no right upon the payee which he can enforce against the bank. A check is simply an order which may be countermanded and payment forbidden by the drawer at any time before it is actually cashed. Therefore, any attaching creditor of the depositor will hold the funds, by serving a garnishment upon the bank before a check given another for the money deposited has been presented for payment at the bank. (Decided by the Supreme Court in the case of *Donohoe-Kelly Banking Company vs. Southern Pacific Company*, which decision is printed in Volume 25, No. 1350, *California Decisions*, page 60.)

Section 529.—LOST CHECK.—The rule that the holder of a check upon a bank has no recourse upon the drawer thereof, until he has presented it to the bank upon which it was drawn and had payment refused, has no application to a lost check. No rule of law would require a bank without the consent of the depositor, to pay out the money of its depositor, upon an alleged lost check, and a demand that it do so would be fruitless. Its obligation is to pay the depositor's money to holders of checks issued by him, and its protection, and the protection of all depositors, requires that the checks be produced and surrendered before payment is made. Until the check is presented, no liability attaches to the bank. No hardship results to the drawer of a check in such a case. If it be non-negotiable, he can, upon notice of the loss, fully protect his interests

by countermanding the order and stopping payment. If it be negotiable, and likely to reach the hands of a bona fide holder, he may insist upon an indemnity bond before giving a new check, or otherwise paying the debt intended to be discharged by it. (Decided by the District Court of Appeals, in the case of California National Bank vs. Weldon, which decision is printed in Vol. 11, California Appellate Decisions, page 649.)

Section 530.—LIABILITY OF BANK FOR PAYMENT OF CHECK AFTER DEATH OF DRAWER.

—The delivery of a check, with instructions not to present it for payment until after the death of the drawer, does not operate as an assignment of the funds drawn upon, and is not valid as a gift; and where the bank pays the check after the drawer's death, an action will lie against the bank to recover the money for the estate of the decedent. (Decided by the Supreme Court in the case of Pullen vs. Placer County Bank, which decision is printed in Volume 25, No. 1349, California Decisions, page 51.)

Section 531.—DRAWING CHECK WITH INTENT TO DEFRAUD.—Every person who, wilfully, with intent to defraud, draws or delivers to another person any check or draft, on a bank, knowing at the time that he has not sufficient funds in or credit with the bank to meet such draft or check in full upon its presentation, is guilty of a felony. The punishment is fixed at not less than one nor more than fourteen years in the State Prison.

Act of the Legislature, approved March 19, 1907.

Assignment for Benefit of Creditors.

Section 532.—ASSIGNMENT BY INSOLVENT DEBTOR.—An insolvent debtor may in good faith execute an assignment of his property in trust for the benefit of his creditors and the satisfaction of their claims. Every assignment must be in writing, and must contain a list of

the names of the creditors of the assignor, and their places of residence and amounts of their respective demands, and the amounts and nature of any security therefor, and must be made to the Sheriff of the county, or city and county, wherein the assignor resides, if the assignor resides within this State; or in case the assignor resides out of this State, then to the Sheriff of the county, or city and county, wherein the property assigned, or some of it, is situated; but when the assignor resides out of the State, an assignment may, by its terms, transfer any property of the assignor in this State. The Sheriff must take possession of all the property so assigned to him. When the assignment has been made, the Sheriff must immediately, by mail notify the creditors named in the assignment, at their places of business or residence as given therein, to meet at his office on a day and hour to be appointed by him, of not less than eight or more than ten days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the Sheriff, and must also publish a notice of such meeting, and the purpose thereof, at least once before such meeting, in some newspaper published in his county, or city and county. The notice so to be mailed must also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment; and if any creditor shall not find the amount of his claim to be correctly so stated, he may file with the Sheriff, at or before such meeting, a statement, under oath, of his demand, and such statement shall, for the purpose of voting, be accepted by the Sheriff as correct; and when no such statement is filed, the statement of amount as set forth in the assignment must be accepted by the Sheriff as correct. No creditor having a mortgage or pledge of real or personal property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, shall be allowed to vote any part of his claim at such meeting of creditors unless he shall have first conveyed, released, or delivered

up his security to the Sheriff, for the benefit of all creditors of the assignor. At such meeting, the Sheriff must preside, and a majority in amount of demands present or represented by proxy must control all questions and decisions. The creditors may adjourn the meeting from time to time, and may vote on all questions, either in person, or by proxy signed and acknowledged before any officer authorized to take acknowledgments, and filed with the Sheriff. At the meeting, the creditors may elect one or more assignees from their own number, in the place and stead of the Sheriff, and the person or persons so elected shall afterward be the assignee or assignees; and the Sheriff, by transfer in writing, must at once assign to such elected assignee or assignees all the property so assigned to him, and deliver possession thereof. The Sheriff, before the delivery of the assignment, must be paid the expenses incurred by him, and fees in such amount as would by law be collectible if the property assigned had been levied upon and safely kept under attachment. Thereupon such elected assignee or assignees shall take, and hold, and dispose of all such property and its proceeds, for the benefit of the creditors of the debtor.

Civil Code, Section 3449.

Section 533—WHAT IS INSOLVENCY.—A debtor is insolvent, within the meaning of the law, when he is unable to pay his debts from his own means, as they become due. But a person, although insolvent, is not prevented by the law from transferring, and may lawfully transfer property in this State to a particular creditor or creditors, for the purpose of paying or securing a debt due, provided the transfer is made in good faith.

Section 534.—VOID ASSIGNMENT.—An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases: (1) If it give a preference of one debt or class of debts over another; (2) If it tend to coerce any creditor to release or compromise his demand; (3) If it provide for the

payment of any claim known to the assignor to be false or fraudulent, or for the payment of more upon any claim than is known to be justly due from the assignor; (4) If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid; (5) If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust; (6) If it exempt him from liability for neglect of duty or misconduct.

Civil Code, Section 3457.

Section 535.—INVENTORY TO BE MADE BY DEBTOR.—Within twenty days after making an assignment for the benefit of his creditors, the debtor must make and file, in the office of the County Recorder of the county in which he resided at the date of the assignment, a full and true inventory showing: (1) All the creditors of the assignor; (2) The place of residence of each creditor, if known to the assignor; or, if not known, that fact must be stated; (3) The sum owing to each creditor, and the nature of each debt or liability, whether arising on written security, account, or otherwise; (4) The true consideration of the liability in each case, and the place where it arose; (5) Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor; (6) All property of the assignor at the date of the assignment, which is exempt by law from execution; and, (7) All of the assignor's property at the date of the assignment, both real and personal, of every kind, not so exempt, and the encumbrances existing thereon, and all vouchers and securities thereto, and the value of such property according to the best knowledge of the assignor.

The inventory must be sworn to by the assignor.

Civil Code, Section 3461.

Section 536.—FAILURE TO FILE INVENTORY.—A failure on the part of a debtor to make and file the

inventory mentioned in the last Section does not render the assignment void. The law provides that if the debtor fails in his duty to file the inventory, the assignees may make and file for record a verified inventory of all assets received by them; and the court, on petition of the assignee, will compel the debtor to appear and be examined relative to all matters embraced in the assignment, and will also compel him to bring with him into court all his books, vouchers, and papers relating to the assigned property. The court will then have power to order the surrender of the books, papers, and vouchers to the assignee, to be retained by him until his trust is fully completed and performed.

Section 537.—EFFECT OF FAILURE TO RECORD ASSIGNMENT.—An assignment for the benefit of creditors is void against creditors of the assignor, and against purchasers and encumbrancers in good faith and for value, unless it is recorded, and unless either the inventory required of the assignor, or the inventory required of the assignee or assignees, is filed in the manner provided by law.
Civil Code, Section 3465.

Section 538.—BOND OF ASSIGNEE.—No bond is given by the Sheriff, but he is liable on his official bond for the care and custody of the property while in his possession. Within forty days after the date of the transfer by the Sheriff, the assignee must enter into a bond, in such amount as may be fixed by a judge of the Superior Court of the county, or city and county, in which an inventory is filed, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to give such bond may be removed by the Superior Court on petition of the assignor or any creditor, and his successor may be appointed by the court.

Civil Code, Section 3467.

Section 539.—ACCOUNTING BY ASSIGNEE.—

After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the Superior Court of the county where the inventory was filed. The assignee's account, when rendered, must make a full and true showing of all his acts with relation to the property assigned to him.

Section 540.—PROPERTY EXEMPT FROM ASSIGNMENT.—Property exempt from execution, and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors, unless the instrument specially mentions them, and declares an intention that they shall pass thereby.

Civil Code, Section 3470.

Section 541.—COMPENSATION OF ASSIGNEE.—

The assignee is entitled to a reasonable compensation for his services, and also to all necessary expenses incurred by him in the management of his trust.

Section 542.—ASSIGNEE PROTECTED FOR ACTS DONE IN GOOD FAITH.—The assignee is protected for acts done in good faith, and will not be held liable for such acts if the assignment is afterward declared by a court to be void.

Section 543.—ASSIGNMENT NOT REVOCABLE.—

An assignment for the benefit of creditors, which has been executed and recorded so as to transfer the property to the Sheriff, or a transfer by the Sheriff to the elected assignee or assignees which has been executed and recorded, cannot afterward be modified or canceled by the parties without the consent of the assignor and of every creditor.

Civil Code, Section 3473.

Section 544.—CREDITORS' CLAIMS.—Notice to the creditors must be published by the assignee, and a copy mailed by him to each creditor, and the creditors must

prove their claims; and after the expiration of thirty days from the first publication of the notice, the assignee may, in his discretion, declare and pay dividends to the creditors whose claims have been presented and allowed. No dividend already declared shall be disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting such claim shall be entitled to a dividend equal to the per cent already declared and paid before any further dividend is made; provided, however, that there be assets sufficient for that purpose; and provided, that the failure to present such claim shall not have resulted from his own neglect; and the creditor shall attach to such claim a statement, under his oath, showing fully why it was not before presented.

Section 545.—CREDITOR HOLDING MORTGAGE OR PLEDGE.—When a creditor has a mortgage, or a pledge of personal property of the debtor, or a lien thereon as security for the payment of a debt due him from the debtor, and shall not have conveyed, released, or delivered up such security to the Sheriff, he shall be admitted as a creditor only for the balance of the debt, after deducting the value of such mortgage, pledge, or lien, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the Superior Court of the county in which the assignment is made shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption on receiving such excess; or he may sell the property, subject to the claim of the creditor, and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor will not be allowed to prove any part of his debt.

PART II.

COLLECTION OF BILLS AND ACCOUNTS.

Section 546.—METHODS OF MAKING COLLECTIONS.—Custom will control to a great extent the methods of making collections in force in different localities, but whether collections be made monthly, quarterly, semi-annually, or annually, there are certain provisions of the law of the State which apply to all methods, and which must constantly be kept in mind. Whether a creditor collects his bills monthly, or at longer intervals of time, the law leaves to his own choice. The parties may contract for payment at any time or place, and the law will enforce the contract.

Section 547.—PRESENTMENT OF BILLS OR STATEMENTS OF ACCOUNT.—The debtor is entitled to have a bill or statement of account, showing the claim of his creditor. This is usual in every business, and it is more necessary in commercial affairs than in any other, for the book accounts of sales of merchandise, and other similar commercial transactions, are usually kept by the creditor alone.

Section 548.—ITEMIZED ACCOUNT.—When a bill has been presented which is not itemized, the debtor has a right to demand of the creditor an itemized account, showing in detail all the items of the claim presented to him.

Section 549.—OPEN AND CURRENT ACCOUNT.—An open account is an account where no balance has been struck. Until a balance is struck, even though there have

been mutual dealings between the parties, the account is open and current.

Section 550.—WHEN OPEN ACCOUNT OUT-LAWS.—An open account will outlaw in four years. That is, if there is a claim, for goods purchased, for instance, upon an open account, all items dating back more than four years will be outlawed, and in a suit for the amount of the bill the plaintiff cannot recover for any item more than four years old. So, in a suit for work or labor performed by the day or month, where there has not been a mutual account, no part can be collected except for the work done within four years.

Code of Civil Procedure, Section 337 (as amended by Legislature March 19, 1907.)

Section 551.—MUTUAL ACCOUNT.—To constitute a mutual account there must be reciprocal demands. An account is mutual when each party makes charges against the other in his books for property sold, service performed, or money loaned or advanced. A payment on account will not make the account mutual. Mutual accounts are only where each party has a demand or right of action against the other. Thus, where a merchant sells a farmer goods, and the latter sells and delivers to the merchant, hay, grain, or a horse, or any other article of personal property, in the ordinary course of business, he has a demand against the merchant, and the merchant has a demand against him, and thus the account between them is a mutual account. In the course of mutual dealings between parties, the balance due may sometimes be on the one side and sometimes on the other, and in the ascertainment of the state of account, each may use his own demands as set off against that of the other until the less is exhausted by the greater. Where it appears, first, that the account between the parties consists of reciprocal demands; second, that the account is open; and third, that the account consists of different items

of different dates; it is then said to be a mutual, open, and current account.

Section 552.—WHEN MUTUAL ACCOUNT OUTLAWS.—A suit may be brought on a mutual account at any time within four years from the date of the last item proved in the account on either side. When any item of a mutual account is within the four years, none of the account is outlawed, though some of the items may be more than four years old.

Code of Civil Procedure, Section 337 (as amended by Legislature March 19, 1907.)

Section 553.—STATED ACCOUNT.—An account stated is where an account is balanced and rendered, and the person to whom it is rendered assents to it as being a correct statement of the balance due, and agrees to pay it. The stated account is usually in writing, but under certain circumstances it may be verbal. Where there is an open account, and the parties meet and agree orally before any portion of the account is outlawed upon the balance that is due, and there is an agreement to pay such balance, this will be good as an account stated. The assent to an account stated by the person to whom it is rendered may be expressly and directly given, or such assent may be inferred from circumstances. If the person receiving the statement makes no objection to it, and holds it for a long time apparently satisfied with it, his assent to it will be inferred.

Section 554.—WHEN STATED ACCOUNT OUTLAWS.—When the parties have stated and adjusted their accounts, and thus ascertained the balance, what was before an implied promise to pay what was reasonable, by such adjusting and stating of accounts, at once becomes an expressed promise to pay a sum certain. Therefore, in a suit to recover the amount due, the items of the original account are no longer referred to. The account is at an

end, in fact. The parties have agreed upon a balance due, which one has promised to pay the other. The right to commence a suit for the amount due, upon a stated account, runs four years after the time when the account was stated, and if suit is not commenced within four years, the debt will be outlawed.

Code of Civil Procedure, Section 337 (as amended by Legislature March 19, 1907.)

Section 555.—INTEREST ON A STATED ACCOUNT.—The uniform custom of a merchant or manufacturer is presumed to be known to those who are in the habit of dealing with him, and in their dealings they are supposed to act with reference to that custom. When it is the universal custom of a merchant to charge interest after thirty days upon monthly balances due upon open accounts, and where such an account showing the interest charged up regularly is received by the debtor and fully understood by him, and where such account becomes stated, either by the prolonged failure of the debtor to object or by a settlement between the parties, the debtor is bound to pay the balance found due, including the interest charged.

Section 556.—ASSIGNMENT FOR COLLECTION.—An open account, a mutual account, or an account stated, may be assigned to a third person for collection. No money need be paid for the assignment. The consideration will be sufficient to sustain the assignment, if the person to whom the account is assigned undertakes on his part to make collection. If the assignee brings suit on the account, and the debtor makes the defense that there was no consideration for the assignment, it will be a sufficient answer to that defense to show that the account was assigned for collection.

Section 557.—ASSIGNEE MAY SUE IN HIS OWN NAME.—The assignee for collection may bring the suit in his own name. The law of California provides that every

suit must be brought in the name of the real party in interest; but the assignee for collection must contribute his labor and services, and his presumed undertaking and promise to do so is a sufficient consideration for the assignment to enable him to sue in his own name.

Section 558.—ASSIGNMENT MAY BE VERBAL OR WRITTEN.—The assignment of an account, open, mutual, or stated, may be made verbally or in writing. It is usual to make such assignments in writing, because this of itself affords documentary proof of the assignment; but a verbal assignment will be sufficient, where the proof is conclusive.

Section 559.—ASSIGNMENT BY ONE PARTNER OF PARTNERSHIP ACCOUNT.—One partner may make an assignment of a partnership account, in the name of the firm, and the assignment will be good. It is of no consequence to the debtor, as it in no respect affects his liability, whether the assignment was made at one time or another, or with or without consideration, or by one or by all the members of the firm. One member of a firm may even assign a partnership claim, in the name of the firm, to himself individually, and this will be sufficient to enable him to sue on it, if the other partners do not object. The other partners making no objections, the debtor will not be allowed to do so.

Section 560.—COLLECTION OF ACCOUNTS WHEN BOOKS ARE LOST.—Though the books in which the accounts were kept are lost, from whatever cause, by fire, or theft, or by being mislaid, yet the accounts can be collected, if they can be proved in some other way. First, the loss of the books of original entry must be shown, and diligent search to find them; then, the accounts may be proved by producing other books into which they were copied from the original entry book, or, if none such exist,

by the verbal testimony of bookkeepers, agents, clerks, proprietors, or any one who may know what the accounts consisted of.

Section 561.—WHAT DEBTOR MAY SET OFF AGAINST ASSIGNED ACCOUNT.—When the assignee of an account sues to recover the amount due, the debtor may set off against the claim any claim which he had against the creditor himself at the time of the assignment, or before notice to him of the assignment. But his claim must be one upon which he could have maintained an independent action, and be one of contract; for he could not, in a suit against him upon an account, brought by either the creditor or his assignee, defend by setting up a demand for damages for a wrong suffered by him.

Code of Civil Procedure, Section 368.

Section 562.—AUTHORITY OF AGENT IN MAKING COLLECTIONS.—The authority of agents in making collections will be equal to the power actually or ostensibly delegated to them by the principal. If the debtor is informed by the creditor that a certain person or a bank is his agent to make collections, there can seldom be any danger in inferring full and extensive authority on the part of the agent to do everything necessary in and about the collection. But it often happens that the authority of the agent, and the extent of his powers, must be ascertained, not by any direct communication from the creditor, but from a long-continued course of dealing or custom of trade. If an agent for collection has been in the habit of collecting in a certain manner, or of making discounts upon certain accounts, or has collected regularly for the same firm or person at a particular place for a long time, these facts being known, it will be presumed that he has authority from his principal coextensive with his acts.

Section 563.—RATIFICATION OF AGENT'S ACTS.
—Even though one who represents himself as an agent to

make collections really has no such authority, the creditor for whom the collection is made may so conduct himself as to create a ratification of the agent's acts. Thus, if he receives the proceeds from the agent, or knows of the manner of collection and makes no objection, or in any way leads the debtor to believe that he is satisfied with the agent's conduct, he will be deemed to have ratified the acts of the agent, and thus bind himself.

Section 564.—AGENT'S COMMISSIONS UPON COLLECTIONS.—The law leaves the agent's commissions upon collections made by him to be regulated by the agreement of the parties. But if a creditor sends a bill or account to an agent, with instructions to collect the same from the debtor, and the agent proceeds to make the collection, and nothing is said about the agent's compensation, there will be an implied obligation on the part of the creditor to pay the agent a reasonable commission. What is a reasonable commission will depend upon circumstances, taking into consideration the nature of the collection, the amount of labor and skill employed, and the amount usually paid, if there is any custom, for such collections in the particular locality or business.

Section 565.—COLLECTION OF BILLS AND ACCOUNTS WHEN DEBTOR IS DEAD.—When the debtor is dead, a claim upon the account must be presented to his Administrator or Executor, within four months from the first publication of notice to creditors, if the estate is appraised at less than \$10,000, or within ten months from the first publication of notice to creditors, if the estate is appraised at \$10,000 or over. The claim must be allowed and approved by the Administrator or Executor and the Judge of the Superior Court. If the claim is not allowed, the creditor can then sue the Administrator or Executor, as the case may be.

Section 566.—SUIT IN JUSTICE COURT ON BILLS AND ACCOUNTS.—A suit to collect the amount of a bill or account must be brought in the Justice Court, when the amount is less than \$300, exclusive of interest. In actions for the recovery of wages for labor performed, the Court must add, as part of the costs, an attorney's fee not exceeding twenty per cent of the amount recovered. This also applies to suits in the Superior Court.

Act of the Legislature, in effect April 28, 1907.

Section 567.—IN WHAT TOWNSHIP SUIT MUST BE BROUGHT.—If the money is to be paid at a certain place, then the suit may be brought in the township and county where the place of payment is situated. But if goods are sold in San Francisco to a person in Ukiah, and the bill is to be paid at Ukiah, then the creditor must sue in the Justice Court in Ukiah Township. If the bill is to be paid at San Francisco, the suit may be brought in the Justice Court there. If there is no agreement as to where the obligation to pay is to be performed, then the suit must be brought in the township and county where the debtor resides.

Section 568.—SUIT IN SUPERIOR COURT ON BILLS AND ACCOUNTS.—If the bill amounts to \$300 or more, exclusive of interest, a suit to collect the amount due must be commenced in the Superior Court. However, the creditor may waive all the excess of his claim, and sue in the Justice Court for a sum less than \$300, exclusive of interest, thus remitting to the debtor all of the account exceeding the amount sued for.

Section 569.—IN WHAT COUNTY SUIT IN SUPERIOR COURT MUST BE BROUGHT.—The same rule applies to suits in the Superior Court as obtains in the matter of Justice Court suits. That is, where there is no place agreed upon for the performance of the debtor's obligation to pay, the debtor has a right to have the suit tried

in the Superior Court of the county where he resides; but if the bill is to be paid where the creditor resides, or at some other place, the suit may be tried there. The creditor may bring his suit in the Superior Court of the county where he lives or has his place of business, in any event, and the suit will be tried there, unless the debtor appears and moves for the transfer of the case to the Superior Court of the county of his own residence.

Section 570.—ATTACHMENT OF DEBTOR'S PROPERTY IN SUIT TO COLLECT ACCOUNT.—

What property of the debtor is the subject of attachment, to secure the collection of an account, in a suit by the creditor or his assignee, and what property is exempt from attachment and execution, will be found fully stated under the head of "Attachments and Executions."

Section 571.—MEANS FOR COLLECTION TO BE EMPLOYED BY AGENT.—Authority of an agent to collect implies and includes the right on his part to use all the ordinary means for collection, and among these are the employment of attorneys and the commencement of suits.

Section 572.—PAYMENT TO WIFE OF CREDITOR.—Where a man's wife is in the habit of transacting business for him, receiving and paying out money for him with his consent, payment to her of a debt due him in his presence, without objection from him, is a payment to him.

Section 573.—PAYMENT OF NOTE TO SUPPOSED AGENT.—A party who in good faith makes payments upon a promissory note to one whom he has reason to believe is the authorized agent of the holder thereof, and whose acts in receiving such payments have come to the knowledge of the holder, and have not been repudiated by him, cannot be held for the money so paid to the agent.

Section 574.—TAKING GOODS FOR CREDITORS' CLAIMS.—Where creditors, after receiving an offer of a bill of sale from their debtor, assign their claims to a collecting agent for the purpose of conducting the transaction, with authority "to take the goods in full of the creditor's claims," the agent has authority to agree with the debtor that the sale shall be conditional, and that the goods will be surrendered to him, when enough is realized from the sales to satisfy the claim.

Section 575.—ACCEPTING PROMISSORY NOTE.—Under authority to settle with the debtor, and take anything he can get, an agent has power to accept a promissory note.

Section 576.—COLLECTION OF NOTES BY AGENT.—Authority given an agent to collect money, due on a note and mortgage, is not authority to the agent to accept a conveyance of the mortgaged premises in payment.

One who holds a note for collection cannot, without authority from the payee, agree to discharge one of the joint makers upon payment by him of a part of the sum due.

Although a mortgagee has authorized an agent to collect interest and to receive payment of the principal when due, the agency does not extend to receiving payment of principal before maturity.

The existence of an agent's authority to receive payment of notes may be inferred from the mutual conduct and relations of the parties, or from the general nature of the transactions in which they are concerned and the circumstances surrounding them.

Section 577.—APPLICATION OF PAYMENTS ON ACCOUNT.—Where a payment is made upon general account, with no direction as to its application, the law applies it to the oldest items; that is, the first debits are to be

charged against the first credits, and the debt paid according to priority of time. In the case of a running account between parties, where there are various items of debit on one side and of credit on the other, occurring at different times, and no special appropriation of payments constituting the credits has been made by either party, the successive payments and credits are to be applied in discharge of the items of debit antecedently due, in the order of time in which they stand in the accounts. In other words, each item of payment or credit is applied in extinguishment of the earliest items of debt, until it is exhausted.

Section 578.—COLLECTION OF ACCOUNTS FOR LIQUORS SOLD.—The law of California prohibiting the collection of accounts for liquors sold at retail for any greater amount than \$5.00 applies both to sales “at retail” and sales “by the drink.” The word “retail” as used in the law refers to sales in quantities less than one quart. A dealer selling liquors in quantities less than one quart is a retailer, and cannot collect, on account of such sales, a sum greater than \$5.00. A merchant selling wines and whiskies in amounts of gallons and half gallons can collect the whole amount of his bill.

(Decided by the Supreme Court of California, in the case of Bettencourt vs. Sheehy, which decision is printed in Vol. XXXIX of California Decisions, page 447.)

Section 579.—FORM OF ASSIGNMENT OF AN ACCOUNT.—The following is a form of assignment of an account:

Know all men by these presents, that I,.....
 of....., State of California, in consideration of.....
 dollars to be paid by.....of....., State of
 California, the receipt whereof is hereby acknowledged, do
 hereby sell, assign, and transfer to said.....all
 and whatsoever sum or sums of money now due and becom-
 ing due to me from.....of.....
 State of California; to have and to hold the same to the
 said....., with power to collect the same in my

name and as my attorney hereunto duly authorized, to his own use.

It is expressly understood, however, that I, the said, am forever to be kept and saved harmless by the said.....from all cost or charge hereafter, in any way or manner, for and from the expense of the collection of the sum and sums hereby sold and assigned.

In witness whereof I have hereunto set my hand and seal this.....day of....., 191..

..... (Seal.)

PART III.

NOTES AND MORTGAGES.

Promissory Notes.

Section 580.—WHAT IS A PROMISSORY NOTE.—

The statute law of California defines a promissory note to be "an instrument negotiable in form, whereby the signer promises to pay a specified sum of money." But, while it is defined as an instrument "negotiable in form," it may be not negotiable, and still be a promissory note. And the law of the State, as well as the rules of commercial business, recognizes two classes of promissory notes, negotiable and non-negotiable. The difference between these two classes,—what constitutes a negotiable note, and what is meant by a non-negotiable note,—will be found stated further on, in other Sections.

Civil Code, Section 3244.

Section 581.—WHO MAY BE PARTIES.—All persons capable of entering into a contract may be parties to a promissory note, and be bound by it. And all persons in California are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights. A minor in California is a male under the age of 21 years, or a female under the age of 18 years. A minor under the age of 18 cannot make a contract relating to real property, or relating to any personal property not in his immediate possession or control; but he may make any other contract in the same manner as an adult, subject to certain conditions, stated in the next Section. A person of unsound mind, entirely without understanding, as an idiot or lunatic, has no power to make a contract of any kind; but a

contract may be made by a person of unsound mind who is not entirely without understanding, such a contract, however, being subject to be set aside in court. A person deprived of civil rights is not capable of making a contract while in that condition. A person is deprived of civil rights when he is sentenced to imprisonment in the State Prison for life, and his civil rights are suspended during the term when he is sentenced for a term less than life. A convict may, however, make and acknowledge a sale and conveyance of property.

Civil Code, Sections 33, 34, 38, 39, 1556; Penal Code, Sections 673, 674, 675.

Section 582.—NOTE MADE BY MINOR.—A minor may make a promissory note at any time before he comes of age. But, if he does make a promissory note while under the age of 18 years, he may disown and repudiate it, either before he comes of age or within a reasonable time afterwards, by giving notice that he disaffirms it. If he dies before coming of age, his heirs or executors have a right to disown and repudiate the note. No part of a note made by a minor under the age of 18 years can be collected, if he repudiates and disaffirms it before he reaches his majority, or within a reasonable time afterwards. If a minor over 18 years of age makes a note, he may likewise repudiate and disaffirm it, before becoming of age or within a reasonable time afterwards, but he must restore the consideration to the party from whom it was received. Thus, if a young man, over the age of 18 and under 21 years of age, borrows a sum of money, and makes his note as security, he may disown and repudiate the contract in the manner before stated, but he must return to the lender the money he actually received. The reason of the distinction between the contracts of minors under the age of 18 and the contracts of minors over 18 years is this, that a minor under the age of 18 is presumed not to have arrived at an age of judgment and discretion sufficient to protect him from the schemes of those who might take advantage of his

infancy to defraud him; and all persons who enter into a contract with a minor under the age of 18 must do so at the peril of having such a contract absolutely disowned and disaffirmed.

Civil Code, Section 35.

Section 583.—NOTE MADE TO MINOR.—A promissory note may be made to a minor, and he takes it subject to the same right to disaffirm the contract as he possesses with relation to a note made by him. If he takes a note made to himself, and does not give notice of disaffirmance to the maker, before he attains his majority or within a reasonable time afterwards, the maker will be bound, and the note can be collected. Also, a minor who takes a note made to himself may transfer it by indorsement to another, and the person to whom he indorses the note can collect it, unless after indorsement the minor gives notice to the maker that he disaffirms and repudiates the note. In other words, the person to whom a minor indorses a note will take it subject to the right of the minor to disaffirm it.

Section 584.—NOTE MADE BY MARRIED WOMAN.—Under the laws of California, married women have many rights which they never had in other countries. In this State a married woman may enter into any contract with any person, respecting property, which she might do if unmarried. She may buy or sell, lease or mortgage, lend or borrow, in her own name and on her own account. It follows, as a matter of course, that a note made by a married woman is a valid and binding obligation, for she has the right to make it. But a note made by a married woman, and signed by her alone, can only be collected out of her separate property. The community property belonging to the husband and wife is not liable for the contracts of the wife made before marriage. The separate property of the wife, out of which alone a note made by her can be collected, includes all property which she owned

before marriage, and all property which she acquires after marriage by gift, or by will, or by descent to her as heir, and the rents and profits of such property. If a note made by a married woman is sued on, the judgment can only be enforced against her separate property. A married woman may contract with her husband as well as with others, and a valid note may be made by her to him.

Civil Code, Sections 158, 162.

Section 585.—NOTE MADE TO MARRIED WOMAN.—A promissory note may be made to a married woman, and she may collect it alone, without reference to her husband, if it relates to her separate property. She may legally take a promissory note from her husband, as well as from others. She may sue in her own name to collect a note made to her, if it concerns her separate property, and her husband need not be a party to the suit.

Code of Civil Procedure, Section 370.

Section 586.—NOTE MADE BY CORPORATION.—A promissory note may be made by a corporation, as well as by a natural person. But there are certain necessary requisites to the validity of a note made by a corporation which do not exist in the case of a natural person. While a man may act as his own individual will shall dictate, a corporation, being a creature without a soul, can only act by means of agents. These agents may have general powers delegated to them, which serve for all occasions, or they may have special powers given them, for a certain prescribed purpose. In either case, many important questions frequently arise as to the power of its agents to bind a corporation. A corporation must be managed and controlled by a Board of Directors, having under them, and subject to their directions, certain officers or other agents. In California, the Board of Directors of a corporation may consist of a number, not less than three, or any larger number, selected from among the members or stockholders. A majority of the Board constitutes a quorum. Unless a

quorum of the Board of Directors is present and acting, no business performed is valid as against the corporation. The Directors are agents of the corporation only when they act as a Board. Therefore, if a corporation makes a note, such action must be authorized by its Board of Directors, a majority of the Board being present. A corporation must have a seal. It can only do the business for which it was organized. A corporation organized for one purpose can not carry on business for another purpose. In the course of its legitimate business, a corporation may borrow money, or secure a creditor, and make its note therefor. This is done by the vote of the Directors, at a regular meeting, a majority being present. A record of the votes must be kept, the ayes and noes being recorded. A majority of the Board must vote in favor of the proposition. The execution of the note being thus authorized, the President may sign the name of the corporation, affix the seal of the corporation, and deliver the note for the corporation. No Director must be financially interested in the transaction in which the note is authorized to be executed, in any way which conflicts with the interests of the corporation. If any Director is so interested, and it requires his vote to make a majority in favor of the proposition, the action of the Board will not be legal, and the note will be void. The note must be made in the legitimate business of the corporation, otherwise it will be void. For instance, if the Directors of a banking corporation should borrow money to build a railroad, the building of railroads not being one of its purposes, the act of the Directors is outside of their power, and the note is invalid. Every person taking a note from a corporation is presumed to know the purposes of its organization, and is presumed to know whether the execution of the note was authorized as the law directs. Therefore the person to whom the note is made is bound to inform himself of the facts; for, if the note has not been made by legal authorization of the Directors, or if it is outside the power of the corporation, and not within its legitimate business, in a suit on the note, the corporation

can make that defense and defeat the collection of the note. If a note has been made, in the manner and for a purpose authorized by law, the corporation is legally bound to pay it. And, further, each stockholder in the corporation becomes bound for the payment of the note. Each stockholder is individually and personally liable for such proportion of the note of the corporation as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation. The liability of each stockholder is determined by the amount of stocks or shares owned by him at the time the note was made. In corporations having no capital stock, each member is individually and personally liable for his proportion of the amount due on the note. It sometimes happens, too, that, after the President or other agent of the corporation has made a note for it, without authority first given, but for the legitimate uses and purposes of the corporation, the Directors afterward ratify the act of the agent. This ratification may be by a resolution passed at a meeting of the Board, or it may occur where the corporation enjoys, in its proper business, the fruits of the transaction. In either case, the corporation and its stockholders or members are equally bound as when the note is made by previous authority. Where the transaction concerning the execution of a promissory note by a corporation is fully entered in the books of the corporation, and notice thus imparted to it, and after such notice the corporation retains the consideration of the transaction, and thus accepts the benefits, it must be held to have ratified the transaction. (Decided by the Supreme Court of California, in the case of Curtin vs. Salmon River Hydraulic Gold Mining and Ditch Company, which decision is printed in Volume 26, California Decisions, page 949.)

Civil Code, Sections 290, 305, 308, 322.

Section 587.—NOTE MADE TO CORPORATION.—

A note may be made to a corporation, as well as by it. The note should be made to the corporation by its corporate name, but a mistake in the name will not invalidate

the note. If there is a mistake in the name of the corporation, in the note, that will make no difference, if it can be reasonably ascertained from the note what corporation is intended. Having taken and received the note, the corporation has the same rights, with reference to its collection, as an individual would have.

Civil Code, Section 357.

Section 588.—NOTE MUST BE IN WRITING.—

There is no such thing as a verbal promissory note. A promissory note must be in writing.

Section 589.—NOTE MAY BE IN PENCIL.—While a promissory note must be in writing, such writing need not be in ink; it may be in pencil; and it need not be all in the handwriting of the maker; for it may be printed, or it may be typewritten, yet if the name of the maker is signed to it, the note will be valid.

Section 590.—MUST BE FOR THE PAYMENT OF MONEY.—A promissory note must be for the payment of money; and for the payment of money only. So, a written promise to pay money and goods, or to pay goods alone, is not a legal promissory note. No written promise to pay is a valid promissory note, unless it be for the payment of money, and of money only. But it may be made payable in the money or currency of any other country, as well as in the money of the United States. It may be made payable in the money of England, or France, or Spain, or Holland, or Italy, or of any other country, and will be just as binding as though made payable in the coin of the United States. It may be made payable in coins, such as guineas, ducats, doubloons, crowns, or in dollars, or in pounds sterling. In the ordinary business transactions of this country a note is usually made payable in dollars, gold coin of the United States.

Civil Code, Section 3244.

Section 591.—MUST BE FOR A CERTAIN SPECIFIED AMOUNT.—Not only must the note be for the payment of money, but it must also be for a certain specified amount. The amount stated in the note must be fixed and certain. Therefore, if the promise be, to pay a specified sum of money, with all other sums that may be due; or, to pay a specified sum of money, and the demands of another person; or, to pay a specified sum of money, after deducting allowances and expenses; in all such cases the instrument is void as a promissory note, because the amount to be paid is not fixed with certainty on the face of the note. The amount to be paid, however, if it be a fixed sum, need not be written in words, but may be expressed in figures.

Civil Code, Section 3244.

Section 592.—MUST NOT BE SUBJECT TO ANY CONDITION OR CONTINGENCY.—The note, to be valid, must not be subject to any condition or contingency which might defeat the promise to pay. The money must be payable absolutely, and must not depend upon the happening or not happening of some event. Consequently, if a note is made payable provided a thing is done, or provided a thing is not done, or which makes the payment depend upon any contingency or uncertainty, it is not a valid promissory note.

Section 593.—FORM OF NOTE.—A promissory note need not be in any particular form, so long as it is certainly to be seen on the face of it who is the maker, to whom it is payable, the sum to be paid, and an absolute promise to pay it. The most common form of negotiable promissory note in use in California, and one which answers every purpose, is as follows:

....., Cal., 191..
after date, for value received, I promise
 to pay....., or order, at.....,
 California, the sum of.....Dollars,

Gold Coin of the United States, with interest thereon in like Gold Coin at the rate of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

.....

Or the note may be made as follows:—

....., Cal.,, 191..
 One day after date, for value received, I promise to pay
, or order, at.....
 California, the sum of....., Dollars, Gold
 Coin of the United States, with interest thereon in like
 Gold Coin at the rate of.....per cent per annum from
 date until paid. Interest payable semi-annually, and if not
 so paid to be added to the principal and bear interest at the
 same rate until paid.

.....

Or the note may be made as follows:—

....., Cal.,, 191..
 For value received, I promise to pay.....
 or bearer the sum of.....Dollars, Gold
 Coin of the United States, with interest thereon in like
 Gold Coin at the rate of.....per cent per annum from
 date until paid. Interest payable semi-annually, and if not
 so paid to be added to the principal and bear interest at
 the same rate until paid.

.....

Section 594.—TIME OF PAYMENT.—It is not absolutely necessary that a note should state the time of payment. If it does state the time of payment, it is due on the day stated, or, when that day is a holiday, the next business day. If it does not specify the time of payment, but merely "For value received I promise to pay," it is payable immediately. If the day of payment falls on Sunday, or Fourth of July, or Christmas, or Thanksgiving, or any other legal holiday, the note is due on the next day.

Civil Code, Sections 3099, 3132.

Section 595.—PLACE OF PAYMENT.—A note is valid which does not specify any place of payment. If the note specifies a place of payment, as, "At San Francisco," it must be paid at the place specified. If the note does not specify any place of payment at all, it is payable at the residence or place of business of the maker, or wherever he may be found. The holder of the note, when no place of payment is specified, may present it for payment at either the maker's residence, his place of business, or wherever he is found, at his option.

Civil Code, Section 3100.

Section 596.—DATE OF NOTE.—The date of a note need not necessarily be at the beginning. The date may be placed upon any part of the paper, at the top, or at the bottom, or anywhere else on its face, and it will be sufficient. It is not necessary to insert the true date of its signing. Any date may legally be inserted by the maker, whether past, present, or future, and the note will still be valid and binding. In any dispute in court the holder or the maker will be allowed to show the actual time when the note was executed or delivered, or when it was intended by the parties to take effect.

Civil Code, Section 3094.

Section 597.—NOTE NOT DATED IS VALID.—A note is valid although not dated at all. If it bears no date, it will be considered as dated at the time it was executed. And if the holder of a note which bears no date at all sues to collect it, he will be allowed to show by verbal testimony when the note was actually signed, or when it was intended by the parties to take effect.

Civil Code, Section 3091.

Section 598.—HOW MUST BE SIGNED BY MAKER.—The name of the maker may be affixed to any portion of the note, and it will be good. It may be at the beginning, or in the middle, or signed at the end. For instance, if a note begins, "I, John Smith, promise to pay,"

etc., and is not otherwise subscribed at all, it will be a valid note, because the intention to bind the maker is apparent. The maker's name may be signed in pencil. If the maker cannot write, his signature may be by an X, or mark, his name being written near the mark by another person, who writes his own name as a witness.

Civil Code, Section 14.

Section 599.—FORM OF NOTE SIGNED WITH AN X.—The following is a good form for a note signed with an X, or mark by a person who cannot write:—

....., Cal., 191..
after date, for value received, I promise
 to pay....., or order, at.....,
 California, the sum of.....Dollars, Gold
 Coin of the United States, with interest thereon in like
 Gold Coin at the rate of.....per cent per annum from
 date until paid. Interest payable semi-annually, and if not
 so paid to be added to the principal and bear interest at
 the same rate until paid.

his
 SAMUEL X GREEN.
 mark.

GEORGE JONES,

Witness to signature of Samuel Green.

Section 600.—MAKER'S NAME SPELLED WRONG.
 —It will make no difference in the validity of a note that the name of the maker is misspelled in his signature. The note is good if it can be determined, by the face of the note, or the indorsement on its back, who the maker is.

Section 601.—NAME OF PERSON TO WHOM NOTE IS PAYABLE.—The payee need not be named in person, if some one be indicated. Therefore it is sufficient if the note is made payable "to John Smith, or bearer," or "to the holder," or "to order," for this must be intended to mean whoever comes into lawful possession of it.

Section 602.—NOTE PAYABLE ON OR BEFORE A CERTAIN DATE.—A note may be made payable on or before a certain date, and this will give the maker the right to pay the note at any time before the date named, at his option. But the holder cannot compel the maker to pay the note until the date named in it. Thus, if a note is made payable "on or before one year after date," the maker has a right, if he chooses, to pay the note at any time during the year; but the holder cannot compel him to pay until the year's time has expired.

Section 603.—FORM OF NOTE PAYABLE ON OR BEFORE A CERTAIN DATE.—A good form of note, giving the maker the option of paying at any time before the date named, is as follows:

....., Cal.,, 191..
 On or before one year after date, for value received, I
 promise to pay....., or order, at.....,
 California, the sum of.....Dollars, Gold
 Coin of the United States, with interest thereon in like Gold
 Coin at the rate of.....per cent per annum from date
 until paid. Interest payable semi-annually, and if not so
 paid to be added to the principal and bear interest at the
 same rate until paid.

.....

Section 604.—NOTE WITH PAYEE BLANK.—A note may be made with the payee blank, that is, with a blank space for the payee's name to be inserted, and it will be payable to bearer. It passes by delivery, and any bona fide holder for value may fill it up with his own name and sue upon it.

Section 605.—NOTE PAYABLE TO ORDER OF MAKER.—A note may be made payable to the order of the maker. For instance, the note may call for payment "to the order of myself," and be indorsed by the maker to another person. The holder will take a valid note by such indorsément, and the maker will be bound.

Section 606.—WHEN NOTE IS NEGOTIABLE.—

In order for a note to be negotiable, it must be made payable to "order," or to "bearer." Without these words, the note is not negotiable. By a negotiable note is meant an instrument which passes from one person to another by indorsement and delivery, and which, if transferred before it is due, entitles the holder to collect the full amount which its face calls for. But there must be something on the face of the note to indicate the intention of the parties that it shall be transferable by indorsement, negotiable; and commercial custom and the law of California provides that such intention must be made manifest on the face of the note, by the use of the word "order" or "bearer."

Civil Code, Section 3087.

Section 607.—WHEN NOTE IS NOT NEGOTIABLE.—

A note which is merely made payable to a certain person, and not to "order," or not to "bearer," is not negotiable. But, besides the omission of these words of negotiability, there are other things which destroy the negotiable character of a note. Thus, if a note is made payable out of a certain specified fund, it is not negotiable.

Section 608.—DIFFERENCE BETWEEN NEGOTIABLE NOTE AND NOTE NOT NEGOTIABLE.—

In the law of California, as applied to common business affairs, the essential difference between the two kinds of notes, a note which is negotiable and a note which is not negotiable, will be found to be this: A negotiable note passes from one to another by delivery and indorsement, and may pass through an indefinite number of hands, and so long as it is indorsed for value, before becoming due, the holder acquires an absolute claim against the maker. The note, by being made payable to order, or to bearer, being negotiable, is a circulating credit, and it makes no difference to the holder that the maker of the note and the payee named in it may have had other dealings between themselves, on

account of which the payee may have become indebted to the maker; and in a suit upon a negotiable note, which has been indorsed for value to a third person, the maker cannot set up against the note anything which the payee owes him. The maker of a negotiable note, indorsed by the payee for value to another, must pay the whole note. But a note which is not negotiable stands upon a different footing. It may pass from the payee to whom it was made, for it may be assigned by the original holder to another. But the assignee of a non-negotiable note takes it subject to all set offs which the maker may have against the original holder. Let us suppose that Jones makes his note to Smith for \$500, and the note is not negotiable, and Smith assigns it to Green, but at that time Smith has become indebted to Jones upon another contract, in the amount of \$250; when Green sues to collect the note, Jones can set off against the \$500 note the \$250 which Smith owed him. It will make no difference that Green paid Smith the full \$500 called for by the note; the note was not negotiable, and he was bound to take it, if he chose to take it at all, subject to any defense which the maker might have acquired against his assignor.

Civil Code, Section 1459.

Section 609.—JOINT NOTE.—Two or more persons may make a note, and become jointly liable to pay it. That is, the intention may be expressed by two or more makers of a note that they will take upon themselves the mutual and joint obligation of paying the sum of money specified in it.

Civil Code, Section 1430.

Section 610.—FORM OF JOINT NOTE.—A joint note may be made in the following form:—

....., Cal.,, 191..
after date, for value received, we promise to pay to....., or order, the sum of
Dollars, Gold Coin of the United States, with interest thereon in like Gold Coin at the rate

of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

.....

.....

Section 611.—LIABILITY ON JOINT NOTE.—The makers of a joint note are all liable together, each for his proportionate share, and must all be sued together. But one of the makers of a joint note, who satisfies more than his share of the claim against all, may compel all the parties joined with him to contribute their proportion of the amount so paid by him.

Civil Code, Section 1432.

Section 612.—JOINT AND SEVERAL NOTE.—Several persons may make a note so as to become jointly and severally liable to pay it; such a note expressing the intention, that the holder may have the right to call upon all or any one or more of the makers for payment of the note, at his option.

Civil Code, Section 1430.

Section 613.—FORM OF JOINT AND SEVERAL NOTE.—A joint and several note may be made in the following form:—

....., Cal.,, 191..

.....after date, for value received, we or either of us promise to pay....., or order, at....., California, the sum of..... Dollars, Gold Coin of the United States, with interest thereon in like Gold Coin at the rate of.....per cent per annum from date until paid. Interest payable semi-annually, and if not so paid to be added to the principal and bear interest at the same rate until paid.

.....

.....

Section 614.—LIABILITY OF MAKERS OF JOINT AND SEVERAL NOTE.—The makers of a joint and several note are liable in a twofold capacity. All are liable together, each for his proportionate share of the sum specified in the note, and each one of the makers is severally liable, standing alone. The holder of the note may sue all of the makers together, and recover a judgment against all, or he may, at his option, sue any one of the makers alone, and compel him to pay the whole note. If one of the makers is compelled to pay the whole note, he, in turn, may compel the others to pay him their proportionate share for which they became liable on the note. With this, however, the holder has nothing to do. He has the right to single out any one or more of the signers of a joint and several note, and collect from him or them, or he may collect from all.

Section 615.—INTEREST.—The California law of interest does not recognize usury, and any rate may be charged which the parties agree upon. In many States of the Union the law limits the rate of interest which can be charged to a certain per cent per annum, ranging in amount from 5 to 12 per cent; but in California the conditions of settlement and early business dealings always were such as to encourage inflation and speculation, and consequent high rates of interest, and the Legislature has several times refused to enact a law against usury. Therefore the law now is that the parties to a promissory note may agree upon any rate of interest, and the note will be valid.

Section 616.—LEGAL RATE OF INTEREST.—The legal rate of interest in California, that is, the rate allowed by law when the note does not say anything about interest, is seven per cent per annum. Therefore, if a note is made which does not say anything at all about interest, and suit is brought to collect it, the judgment against the maker will bear interest at the rate of seven per cent per annum. This interest will commence at the date when the note became due.

Section 617.—ATTORNEY FEES.—A note may be made providing that, in the event of the holder commencing suit to collect it, the maker will pay an attorney fee to the payee. Such a note is negotiable. The session of the Legislature of 1905 adopted an amendment to the Civil Code, providing that a negotiable note may provide for the payment of attorney's fees and costs of suit, in case suit be brought to collect the note, and the note will still be negotiable. (Amendment to Section 3088, Civil Code, approved March 10, 1905.)

Section 618.—WHEN NOTE IS OUTLAWED.—In California a note is outlawed if it is allowed to run more than four years after it becomes due. For instance, if a note is made payable one year after date, it will not outlaw for five years; the holder may commence a suit on the note after the expiration of the one year; but he may wait, and commence the suit at any time within four years after the note by its terms becomes due. The same rule of course applies to a note made payable at any other term. The note remains good for four years after it is due. After four years from the date when the note becomes due, in a suit upon the note, the maker or other person liable to pay it can set up as a defense that it is outlawed. And if in fact the holder has waited more than four years after the note has become due, before commencing a suit upon it, the note will be outlawed, and cannot be collected if such defense is made.

Code of Civil Procedure, Section 337.

Section 619.—APPARENT MATURITY OF NOTE.
—The apparent maturity of a promissory note, payable at sight or demand, is as follows: If it bears interest, one year after its date; or, if it does not bear interest, six months after its date. Therefore, if an interest-bearing note is made, reading, "For value received I promise to pay," etc., it matures one year after its date. If the holder presents the note

for payment within one year from its date, he has four years from the time when he demands payment in which to sue upon the note. If he does not demand payment until after one year from its date, the four years will not begin at the time when he demands payment, but will begin one year after the date of the note. Where a promissory note is payable at a certain time after sight or demand, such time is to be added to the periods mentioned.

What has been said above applies only to promissory notes in which the time of maturity does not appear upon the face of the note, that is, where the time when the note becomes due is not stated.

Civil Code, Sections 3135, 3136.

Section 620.—WHEN OUTLAWED NOTE IS RENEWED.—A note is renewed by the promise of the maker to pay the sum due. But the promise must be in writing, in all cases, or the note will not be renewed. There must be a written acknowledgment of the debt and an unconditional promise to pay it, in order to revive it, after a note is outlawed. The acknowledgment and promise are not required to be in any particular form. It may be indorsed on the note; it may be by letters written by the maker to the creditor; or it may be by writing, in the form of a contract, to revive and keep alive the note. But in whatever form the writing is, whether by indorsement, or letter, or formal contract, the written promise must be signed by the debtor and made to the creditor. If the maker of the note admits, after it is outlawed, to a third person that he owes the money, the note will still remain outlawed. The law is that the acknowledgment of an outlawed debt and the new promise to pay it, must be made to the creditor himself, and must be in writing, signed by the debtor. The payment of interest will not revive an outlawed note, unless such payment is accompanied by a written acknowledgment of the principal debt and a promise to pay it. A part payment of the amount of a note, after it has become

outlawed, will not revive the whole debt without a written acknowledgment. A letter from the maker of the note to the creditor, after it is outlawed, expressing a desire to pay it, will revive the debt and create a new promise to pay. The holder of the note may then sue to collect the amount due, at any time within four years after the new promise was made. The effect of the new promise to pay is to extend the obligation of the debtor four years longer. If one only of several joint makers of a note, after it is outlawed, signs a written acknowledgment and promise to pay the debt, he binds himself alone. He cannot bind anybody but himself, and if the creditor wants the obligation extended as to all the joint makers of the note, he must get the signatures of all.

Code of Civil Procedure, Section 360.

Section 621.—INDORSEMENT OF NEGOTIABLE NOTE.—A negotiable note, if payable “to order,” passes from one person to another by indorsement. This indorsement must be in writing. One who agrees to indorse a negotiable note is bound to write his signature upon the back of the note, if there is sufficient space on the back for that purpose. But it sometimes happens that the holder of a note has written on the back acknowledgments of money paid, or that many previous indorsers have signed their names, and in this manner the entire back of the note is covered, and there is no more room for any further writing upon it. The law of California provides, that when this happens, the holder may pin or paste on a piece of paper sufficient for his own and subsequent indorsements. Such addition to the original note thus becomes incorporated as a part of it. A note with the name of the holder written by him on the back, or, if there is no room on the back, on a piece of paper pinned or pasted to the note, passes the legal title in the debt to the person to whom the note is delivered.

Civil Code, Sections 3108, 3109, 3110.

Section 622.—KINDS OF INDORSEMENTS.—There are two kinds of indorsements; one is called a general indorsement, and the other is called a special indorsement.

Section 623.—GENERAL INDORSEMENT.—A general indorsement is one where the name of the indorser is written on the back of the note, without writing the name of any indorsee. The note may then be delivered to anybody. The indorsement is general, because not made to any one in particular. Therefore the title to the note passes to any person to whom it is delivered, is payable to the bearer, and may be indorsed and transferred by the bearer.

Section 624.—SPECIAL INDORSEMENT.—A special indorsement is where the holder writes his name on the back of the note, and also writes the name of the indorsee, thus specifying a particular person to whom payment is to be made. A note thus indorsed cannot be indorsed again and passed on by anybody but the indorsee whose name is written on the back of the note.

Civil Code, Sections 3112, 3113.

Section 625.—INDORSER OF NON-NEGOTIABLE NOTE.—One who writes his name upon the back of a non-negotiable promissory note, to give it credit, is a guarantor, and is liable *prima facie* for the payment of the note upon default of the maker.

Where a corporation has received the money obtained on a promissory note, upon which its name appears as an indorser, it cannot thereafter question the authority of its officers to make such indorsement. (Decided by the California District Court of Appeals, in the case of *Tilden vs. Goldy Machine Co.*, which decision is printed in *California Appellate Decisions*, Volume 7, page 323.)

Section 626.—ASSIGNMENT OF NOTE NOT NEGOTIABLE.—The difference between a note which is negotiable, and a note which is not negotiable, has been explained.

A note which is not negotiable, for any reason, may nevertheless be transferred, by assignment. There is no particular form of assignment. The following words written on the back of a non-negotiable note are sufficient to assign the note from the holder to another person:

"I hereby assign the within note to John Smith.

"James Green."

It has also been held by the courts that a non-negotiable note may be legally assigned by the mere endorsement of the name of the holder and a delivery of the note to another person.

Section 627.—LIABILITY OF INDORSERS.—Every indorser of a negotiable note, unless his indorsement is qualified in some way, by his indorsement warrants to every subsequent holder thereof that the note is in all respects what it purports to be; that he has a good title to it; that the signatures of all prior parties are genuine; and that if the note is dishonored the indorser, upon notice of the dishonor being given him, will pay the amount due on the note, with interest, to the indorsee or other holder. Any number of indorsements may be made of a promissory note, and the last indorsee may look to all of the indorsers for his money, and he will have the same rights against every one of the indorsers as he has against the particular holder who indorsed the note to him. Sometimes a note, which has been indorsed by a prior indorser, comes back again to him by re-indorsement in the course of business, when he will thereby become reinstated in his original rights in the note; but he will have no claim upon any of the indorsers whose names appear on the note subsequent to his own. The indorsement of a note amounts to a contract on the part of the indorser, unless he qualifies his indorsement, that he will pay the indorsee, or other holder, the amount due, upon receiving notice of the dishonor of the note.

Civil Code, Sections 3116, 3120.

Section 628.—INDORSEMENT “WITHOUT RECOURSE.”—An indorsement may be so qualified that the liability of the indorser will be greatly limited. Thus, if the indorser writes his name on the back of the note, and adds the words, “without recourse,” he thus notifies the person to whom he transfers the note that he will not be responsible as an indorser, and cannot be held liable in case the maker does not pay. But there are circumstances under which the indorser “without recourse” will nevertheless be liable. By the act of transferring and delivering the note to another, although indorsed “without recourse,” the indorser impliedly warrants that the note is valid, that the signatures of prior parties whose names appear thereon are genuine, that the note has not been paid, and that he himself has practiced no fraud in the transfer.

Section 629.—RIGHTS OF INDORSEE IN DUE COURSE OF BUSINESS.—An indorsee in due course of business, who acquires for value a promissory note duly indorsed, before its apparent maturity, and without knowledge of its actual dishonor, gets an absolute title to the note. It is thereafter valid in his hands, notwithstanding any defect in the title of the person from whom he acquired it. It has been said that the law of California cuts off all defenses on the part of the maker of a note, as against a holder in due course of business.

Civil Code, Sections 3123, 3124.

Section 630.—WHEN NOTE MUST BE PRESENTED FOR PAYMENT.—Many vexatious questions constantly arise about the presentation of a note for payment, and these usually refer to the indorsers. The maker is bound whether the note is presented to him or not, for he agrees to pay it at all events. But the indorser occupies a different position. He agrees to pay if the note is dishonored. The indorser is only a surety. So, before the indorser can be called upon for the money, the holder, whoever he is, must try to collect the money from the maker of the note.

The Legislature of California has prescribed by law when a note must be presented for payment. The law provides, that a note payable on demand may be presented to the maker for payment upon any day; but a note made payable at a certain specified time must be presented for payment upon the day it is due. It must be presented within reasonable hours; and if it be payable at a bank, within the usual banking hours of the vicinity, unless the person to whom it should be presented consents to its being presented at any hour of the day. What are reasonable hours, within which the note must be presented, will depend upon circumstances. If the maker has a place of business, it must be presented within the usual business hours of the place or town; if presented at the maker's residence, it may be presented during the whole day until the hours of rest in the evening.

Civil Code, Section 3131.

Section 631.—BY WHOM NOTE MUST BE PRESENTED FOR PAYMENT.—The holder of the note must present it to the maker. By this is not meant that the holder should go in person and present the note. He may go in person, or he may send his agent or attorney. If the holder is dead, at the time the note is due, then the executor or administrator of his estate can present the note and demand payment.

Section 632.—TO WHOM NOTE MUST BE PRESENTED FOR PAYMENT.—The note must be presented to the maker, if he can be found at the place where presentment should be made. If the maker cannot be found there, then it is lawful to present the note to his agent in charge of his place of business or other place specified in the note as the place of payment. It may be presented to a clerk of the maker at his place of business; or to one partner of a firm, if a firm note; or to the administrator or executor of a deceased maker; or to an employee of the

maker at the place where the note is to be presented, if one can be found there, and the maker cannot be found.

Section 633.—AT WHAT PLACE NOTE MUST BE PRESENTED FOR PAYMENT.—A note which specifies a place for payment must be presented there. It is a common thing for notes to be made payable at a certain bank, and in such case it will not do to present the note anywhere else, and so as to any particular place of payment specified in a note. If a note does not name any particular place for its payment, then it must be presented at the place of residence or the place of business of the maker, or wherever he may be found. It is at the option of the holder, where no place is specified in the note, whether he will present it to the maker at his residence, or his place of business, or in the street, or at any other place which may appear convenient.

Section 634.—WHAT WILL EXCUSE PRESENTMENT FOR PAYMENT.—There are some circumstances which under the law of California will excuse presentment for payment. If the maker of the note has no place of business, or if his place of business or residence cannot, with reasonable diligence, be ascertained, then presentment for payment is excused and the indorser is bound. If the maker moves away, after executing the note, and the holder makes diligent inquiry, and cannot learn his residence or place of business when the note becomes due, the failure to present the note to the maker for payment, under such circumstances, will not relieve the indorser from liability. This is upon the principle that the holder has done all he can do, has shown good faith and diligence, and there is no reason why the indorser should be allowed to take advantage of a circumstance over which the holder of the note had no control.

Section 635.—WHAT IS REASONABLE DILIGENCE.—Reasonable diligence is a question of circumstances. Inevitable accident or overwhelming calamity may

prevent the holder of a note from presenting it for payment to the maker on the day it is due, yet if he does present it at the very earliest practicable time thereafter, it will be sufficient. For it may happen that the holder had the intention in good faith to present the note at the proper time, yet all intercourse is stopped between the places where the holder and the maker live, by freshets, or by violent storms, or earthquakes, or other unforeseen conditions of natural objects rendering travel or communication impossible; or the presence of some dread and contagious disease in one or the other neighborhood, such as the yellow fever, or cholera, or smallpox, renders commercial intercourse impossible; or a political revolution may exist in the place where the holder or the maker lives, and by a blockade, or a battle, prevent the holder from presenting the note on the day when it is due; or war may be going on between the country where the maker lives and the country where the holder resides. In all the cases above supposed, if the note is presented within a reasonable time after the prohibitive obstacle is removed, it will be held sufficient under the law.

Section 636.—WHEN A NOTE IS DISHONORED.—

A note is dishonored when it is not paid, on presentment to the maker for that purpose; and it is also dishonored when it is not paid without presentment, when presentment is excused.

Civil Code, Section 3141.

Section 637.—NOTICE OF DISHONOR.—If the holder wishes to make the indorser pay the note, after vainly attempting to collect it from the maker, he must give the indorser notice of the dishonor of the note. He may give the notice in person, or through his agent. A Notary, attorney, or bank, or other agent for collection, may give the notice as the agent of the holder. If there are several indorsers on a note, and notice of dishonor is given by the holder to the last indorser, he in turn must give notice of the dishonor to the indorser immediately before him, other-

wise he cannot reimburse himself for the amount he is compelled to pay the holder.

Civil Code, Section 3142.

Section 638.—HOW NOTICE OF DISHONOR MAY BE GIVEN.—A notice of dishonor may be given by delivering it to the indorser, personally, at any place; or, by delivering it to some person of discretion, at the place of residence or business of the indorser, apparently acting for him; or, by getting the best information obtainable of the place of residence of the indorser, and depositing the notice in the mail directed to the indorser at that place, postage paid. In case of the death of the indorser, the notice must be given to his executor or administrator, or if there is no executor or administrator, then to any member of his family who resided with him at his death, or if he had no family, then it must be mailed to his last place of residence. A notice of dishonor sent to an indorser after his death is nevertheless valid, if the person sending it was ignorant of his death, and could not by ordinary diligence have ascertained the fact.

Civil Code, Sections 3144, 3145, 3146.

Section 639.—WHEN NOTICE OF DISHONOR MUST BE GIVEN.—If the notice of dishonor of a note is not given by mail, then it must be given either on the same day the maker fails to pay it, or on the next business day thereafter. When notice of dishonor is given by mail, it must be deposited in the post-office in time for the first mail which closes after noon of the first business day succeeding the dishonor, and which leaves the place where the note was dishonored for the place to which the notice should be sent. The holder has at least the whole forenoon of the first business day after the dishonor to send off the notice. One of several indorsers, who receives notice of dishonor from the holder of the note, has the same time to give notice to another indorser; that is, he must give notice to a prior indorser either on the same day he receives his

notice from the holder, or on the next business day, unless he gives notice by mail, which must be in the same manner as the holder is required to give notice by mail.

Civil Code, Sections 3147, 3148, 3150.

Section 640.—FORM OF NOTICE OF DISHONOR.

—No particular form of notice is necessary. It may be given in any form which describes the note with reasonable certainty, and substantially informs the party receiving it that the note has been dishonored. The following is a form of notice in writing, to be served on the indorser:—

....., Cal.,, 191..

JOHN GREEN:—

Dear Sir: You are hereby notified that the certain note made and delivered by John Smith to Samuel Stokes, dated April 1st, 1911, for \$500, and interest at 8 per cent per annum, and indorsed April 1st, 1912, by you, is now held by me; that on the day when said note was due I presented it for payment to the said John Smith and demanded payment, but he failed and refused to pay the same; and I hereby notify you that I will hold you for the amount due on said note.

JAMES BROWN.

Section 641.—WHEN NOTICE OF DISHONOR IS EXCUSED.—Notice of the dishonor of a note is excused,

when the holder cannot, with reasonable diligence, ascertain either the place of residence or business of the indorser to be charged; or, when there is no mail communication between the town of the holder and the town in which the place of residence or business of the party to be charged is situated; or, when the notice is waived by the party himself upon whom it was to be served. If, before or after a note becomes due, an indorser has received full security, or the maker has assigned all his estate to him as such security, presentment and notice to him are excused. Delay in giving notice of dishonor is also excused, when caused by circumstances which the holder could not have avoided by the exercise of reasonable care and diligence—as, by an epidemic, or riot, or war, or flood, or storm.

Civil Code, Sections 3156, 3157, 3158.

Section 642.—PROTEST OF FOREIGN NOTE.—

What has been said of notice of dishonor applies only to a note made and payable in California. A note made in a foreign country, or in another State, and sent to this State for collection and dishonored, must be protested by a Notary Public.

Section 643.—WHEN SUIT TO COLLECT NOTE CAN BE BROUGHT.—In California a suit to collect a note can be brought at any time within four years after it is due, provided the note was made in this State. If the note was made out of the State, a suit can be brought in this State to collect it at any time within two years after it is due.

Code of Civil Procedure, Sections 337, 338.

Section 644.—IN WHAT COURT SUIT TO COLLECT NOTE MUST BE BROUGHT.—In all cases where the sum sued for amounts to \$300, exclusive of interest, the suit must be brought in the Superior Court. In cases where the sum sued for, exclusive of interest, amounts to less than \$300, the suit must be brought in the Justice Court.

Code of Civil Procedure, Sections 76, 112.

Section 645.—INSTALLMENT NOTE.—A note is valid which provides for payment in stated installments. This note may also lawfully provide that upon default in the payment of any installment or of interest the whole sum shall immediately become due and payable.

Section 645a.—FORM OF INSTALLMENT NOTE.—The following is a form of installment note:

....., California,, 191..
 For value received, I promise to pay.....
 or order, at.....California, the sum of
Dollars, lawful money of the
 United States, with interest thereon in like lawful money at

the rate of.....per cent per annum from date until paid. Said sum of.....Dollars to be paid by installments as follows, to-wit: The sum ofdollars on the.....day of....., 191., and the remainder in....equal monthly payments ofDollars on the first day of each and every month thereafter, until the whole principal sum and the interest thereon shall have been paid. If default shall be made in the payment of any installment, as above provided, then the whole amount of this note and the interest thereon shall become immediately due and payable.

.....

Mortgages.

Section 646.—MORTGAGE SECURITY.—The ordinary security for the payment of a promissory note is a mortgage of either personal or real property. By a mortgage the debtor secures his creditor without the necessity of changing the possession of the property.

Section 647.—WHAT INTEREST IN REAL PROPERTY MAY BE MORTGAGED.—Any interest in real property which is capable of being transferred may be mortgaged. Interest in real property covering the absolute title in fee simple may, of course, be mortgaged. But the right to mortgage does not stop here. The interest of an heir or devisee under a will, being a vested right, may be mortgaged. One in possession of the land under a verbal agreement to purchase may mortgage the interest that he has. Any interest in the reversion of lands, or any interest in lands which will surely come to a person upon the happening of some event, may be mortgaged.

Civil Code, Section 2947.

Section 648.—WHAT PERSONAL PROPERTY MAY BE MORTGAGED.—Mortgages may be made upon all growing crops, including grapes and fruit, and upon any and all kinds of personal property, except the following:

1. Personal property not capable of manual delivery;
2. Articles of wearing apparel and personal adornment;
3. The stock in trade of a merchant.

Act of the Legislature, approved February 20, 1909.

Section 649.—HOW MORTGAGE IS EXECUTED AND ACKNOWLEDGED.—A mortgage must be in writing, and signed by the mortgagor. It should be recorded, and therefore must be acknowledged before an officer authorized to administer oaths. It is usual in California to have a mortgage acknowledged before a Notary Public, but an acknowledgment before a Justice of the Peace, or County Clerk, or County Recorder, is equally good. If the person executing the mortgage cannot write, he may sign the mortgage by an X or mark, with two witnesses to his signature.

Section 650.—MORTGAGE OF MARRIED WOMAN.—A married woman may mortgage her own property, without the consent of her husband, and without his joining her in the mortgage in any way. A married woman's acknowledgment to a mortgage is made in the same manner as that of any other person.

Section 651.—MORTGAGE OF MINOR.—A minor in California cannot under the age of 18 make a contract relating to real property. Over the age of 18 he may execute a mortgage of his real property, but it is voidable at his election when he comes of age. He may mortgage his personal property, whether under or over 18 years of age, provided the property is in his own possession or control; but this mortgage is also subject to be disaffirmed by him when he comes of age.

Section 652.—MORTGAGE OF PARTNERSHIP PROPERTY.—Partners may make a mortgage of partnership property, but they must sign their own names. Thus,

if Samuel Jones and James Smith are partners, doing business under the firm name of Jones & Smith, their mortgage of partnership property should not be signed with the firm name, "Jones & Smith," but should be signed with their individual names, "Samuel Jones. James Smith."

Section 653.—RECORDING MORTGAGES.—The law of California provides for the acknowledgment and recording of mortgages, real or personal. The mortgage is recorded in the office of the County Recorder of the county where the property is situated.

Section 654.—PROOF OF EXECUTION OF MORTGAGE.—It sometimes happens that a mortgage is made, but not acknowledged by the mortgagor; and the holder of the mortgage afterwards desires to record it. Not having been acknowledged when made, it is not entitled to be recorded. But the law provides that proof of the execution of the mortgage, when not acknowledged, may afterwards be made by either the mortgagor or the mortgagee. Proof is made by going before a Notary Public, or other officer authorized to take acknowledgments, who upon the evidence presented to him certifies to the fact of the execution of the mortgage. When there is a defect in the Notary's certificate, any party interested may sue in the Superior Court and obtain a judgment correcting the certificate.

Section 655.—EFFECT OF RECORDING MORTGAGES OF REAL PROPERTY.—The effect of recording a mortgage of real property is to give notice to the world of the encumbrance upon it, and to give the mortgage precedence over every other lien which subsequently attaches to the property. A recorded mortgage has precedence over one of earlier date which was not recorded, and of which the holder of the recorded mortgage had no notice. A recorded mortgage is good against an attachment or homestead subsequently put on the property, or any other lien subsequent to the mortgage.

(a) **Chattel Mortgage—Planing Mill Machinery—Subsequent Attachment to Real Property—Mortgage of Real Property—Priority of Mortgages as to Machinery.**—A mortgage of real property upon which at the time of its execution there is a planing mill plant in operation with its machinery, engine, boiler and other equipment permanently attached to the property, takes priority, as to such machinery and equipment, over a prior chattel mortgage regularly executed thereon before its installation on the property, where the only notice or knowledge of the latter mortgage is such constructive notice as is imparted by its recordation.

(b) **Lien of Mortgagee of Personal Property—Change of Property to Realty.**—So long as mortgaged personal property remains personal property and is not removed from the county where the mortgage is recorded, the mortgagee is protected in his lien as against subsequent purchasers from the mortgagor, but when the property has been permanently affixed by the mortgagor to land and its character changed from personalty to realty, a different situation arises.

(c) **Mortgage of Fixtures to Realty.**—A purchaser of real estate is bound only to take notice of the record title of the realty, and is not in any way bound to examine the records of chattel mortgages, for he is not affected by the record of a chattel mortgage upon fixtures of such realty.

(Decided by the District Court of Appeals, in the case of *Elliott vs. Hudson et al.*, which decision is printed in Volume 14 of California Appellate Decisions, page 511.)

Section 656.—EFFECT OF RECORDING A CHATTEL MORTGAGE.—A mortgage of personal property must be recorded in the office of the County Recorder of the county in which the mortgagor resides. But if the mortgagor resides in one county, and the property is situated in another county, then the mortgage must be recorded in both counties. If the property is removed to another county by the mortgagor, the mortgagee must, within thirty days, cause the mortgage to be recorded in the county to

which the property has been removed. If these provisions are complied with a chattel mortgage, properly executed, gives the same prior lien to the mortgagee of personal property which he would acquire under a recorded real estate mortgage. A certified copy of a mortgage of personal property once recorded may be recorded in any other county.

Civil Code, Sections 2959, 2964, 2965.

Act of the Legislature, approved February 22, 1909.

Section 657. — MORTGAGE NOT RECORDED GOOD BETWEEN PARTIES.—Even though a mortgage is not recorded, it is good between the parties to it, if the mortgage was executed and signed in the manner provided by law.

Section 658.—MORTGAGE ON HOMESTEAD.—A mortgage on a homestead is void unless it is signed and acknowledged by both husband and wife. A mortgage may be given by the husband alone, on community property, if there is no homestead, and it will be good. But the law of California provides that a mortgage made after a homestead has been filed, signed by the husband alone, is absolutely void. The homestead may be mortgaged, but it must be by the joint act of the husband and wife. They must both sign the mortgage at the time it is made, and they must both know that it covers the homestead property. So, if the husband signs a mortgage on the homestead, and his wife is induced to sign it also, but under the belief that the mortgage covers other property alone, it will not be good against the homestead. A mortgage of the homestead, to be valid, must be the united act of the husband and wife.

Civil Code, Section 1242.

Section 659.—DECLARATION OF HOMESTEAD.—Sometimes a question will arise as to whether there is a legal homestead on file, sufficient to protect the property against creditors. This question will be easily answered, by getting from the County Recorder a copy of the declara-

tion of homestead. The law provides what must be stated in the declaration of homestead filed with the County Recorder, and from what property the homestead may be taken. If the claimant be married, the homestead may be selected from the community property, or the separate property of the husband, or, with the consent of the wife, from her separate property. When the claimant is not married, but is the head of a family, the homestead can be selected from any of his or her property. In order to select a homestead, the claimant must sign and acknowledge a declaration and file it for record in the office of the County Recorder. The declaration of homestead must contain: (1) A statement, showing that the person making it is the head of a family; or when the declaration is made by the wife, showing that her husband has not made such declaration, and that she therefore makes the declaration for their joint benefit; (2) a statement that the person making it is residing on the premises, and claims them as a homestead; (3) a description of the premises; (4) an estimate of their actual cash value.

Civil Code, Sections 1237, 1238, 1261, 1263.

Section 660.—FORM OF DECLARATION OF HOMESTEAD BY HUSBAND AND WIFE.—The following is a good form of Declaration of Homestead by husband and wife, which must be recorded in the office of the County Recorder of the county where the land is situated:—

DECLARATION OF HOMESTEAD:—Know all men by these presents, that we do hereby certify and declare that we are husband and wife, and that we do now at the time of making this declaration actually reside together on the land and premises herein described; that the land and premises on which we reside are situate, bounded, and described as follows, to-wit:—

.....
(Here insert description of land.)

.....
That it is our intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a homestead, and we do hereby select and claim the same as a homestead;

that we make this declaration for our joint benefit, and we declare that we have not heretofore made a declaration of homestead; that the actual cash value of said property we estimate to be \$.....

In witness whereof, we have hereto set our hands and seals this.....day of....., 191..

..... (Seal.)
 (Seal.)

STATE OF CALIFORNIA, }
 County of..... } ss.

On this.....day of....., 191.., before me, a Notary Public in and for said County and State, personally appeared and personally known to me to be the persons described in and who executed the foregoing Declaration of Homestead, and they acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, on this.....day of , 191..

.....
 Notary Public in and for the County of.....,
 State of California.

Commission expires....., 191..

Section 661.—FORM OF DECLARATION OF HOMESTEAD BY HUSBAND.—The following is a good form of Declaration of Homestead by the husband alone, and must be recorded in the office of the County Recorder of the county in which the land is situated:—

DECLARATION OF HOMESTEAD:—

Know all men by these presents, that I do hereby certify and declare, that I am the head of a family; that I do now at the time of making this declaration actually reside with my family on the land and premises hereinafter described; that the land and premises on which I reside are situate, bounded, and described as follows, to-wit:—

.....
 (Here insert description of land.)

.....
 That my wife's name is.....

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a homestead, and I do hereby select and claim the same as a homestead;

that I make this declaration for the joint benefit of myself and wife, and I declare that my wife has not made a declaration of homestead; that the actual cash value of said property I estimate to be \$.....

In witness whereof, I have hereto set my hand and seal this.....day of....., 191..

..... (Seal.)

STATE OF CALIFORNIA, }
County of..... } ss.

On this.....day of....., 191.., before me, a Notary Public in and for the said County and State, personally appeared....., personally known to me to be the person described in and who executed the foregoing Declaration of Homestead, and he acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, on this.....day of....., 191..

Notary Public in and for the County of.....,
State of California.

Commission expires....., 191..

Section 662.—FORM OF DECLARATION OF HOMESTEAD BY WIFE.—The following is a good form of Declaration of Homestead by the wife alone, and must be recorded in the office of the County Recorder of the county in which the land is situated:—

DECLARATION OF HOMESTEAD:—

Know all men by these presents, that I do hereby certify and declare, that I do now at the time of making this declaration actually reside with my family on the land and premises hereinafter described; that the land and premises on which I reside are situate, bounded, and described as follows, to-wit:—

.....
(Here insert description of land.)

.....
That my husband's name is.....

That it is my intention to use and claim the said lot of land and premises above described, together with the dwelling house thereon, and its appurtenances, as a homestead, and I do hereby select and claim the same as a homestead; that I make this declaration for the joint benefit of myself

and husband and I declare that my husband has not made a declaration of homestead; that the actual cash value of said property I estimate to be \$.....

In witness whereof I have hereunto set my hand and seal this.....day of....., 191..

..... (Seal.)

STATE OF CALIFORNIA, }
County of..... } ss.

On this.....day of....., 191.., before me, a Notary Public in and for the said County and State, personally appeared....., personally known to me to be the person described in and who executed the foregoing Declaration of Homestead, and she acknowledged to me that she executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office, on this.....day of....., 191..

.....
Notary Public in and for the County of.....,
State of California.

Commission expires....., 191..

Section 663.—VALUE OF HOMESTEAD.—The homestead of husband and wife must not exceed in value the sum of \$5,000. The value of the homestead selected by the head of a family other than the husband or wife must not exceed in value the sum of \$1,000. Besides the husband or wife, any other person may take a State homestead, as the head of a family, who has residing on the premises and is caring for and maintaining, his or her minor child, or minor grandchild, or the minor child of his or her deceased wife or husband, a minor brother or sister or the minor child of a deceased brother or sister, a father, mother, grandmother, or grandfather of a deceased husband or wife, or an unmarried sister.

Civil Code, Section 1261.

Section 664.—FORM OF REAL ESTATE MORTGAGE.—A good form of mortgage on real estate is as follows, the blank spaces to be filled in with the proper names, dates, amounts, and descriptions:—

This mortgage made the.....day of....., in the year 191.., by.....

.....
 Mortgagor.....to.....Mortgagee

Witnesseth

That the Mortgagor.....mortgages to the Mortgagee
those certain lots, or tracts of land situated in
County, State of California, particularly de-
 scribed as follows, to-wit:—

.....
 (Here insert description of property.)

.....
 as security for the payment of a certain obligation in writ-
 ing, of which the following is a copy:—

....., Cal.,, 191..

.....after date.....

for value received,promise to pay.....

....., or order, at.....

.....Dollars, with inter-
 est from.....at the

rate of.....per cent per annum, payable semi-
 annually, principal and interest payable in United States
 Gold Coin. Interest if not paid when due, to be added to
 the principal and bear interest at the same rate until paid.

.....
 \$.....

But in case default be made in the payment of either the
 principal or any installment of interest provided for in said
 obligation when due, then the whole shall be due at the
 option of the holder of the said obligation, and action may
 be immediately commenced, without notice, to foreclose
 this mortgage.

And the plaintiff, in action to foreclose this mortgage
 shall, upon filing the complaint in foreclosure, be entitled
 to.....per cent on the amount due on said obligation
 as counsel fees.

And the holder of said obligation may pay all taxes or
 other encumbrances now subsisting or hereafter to be laid
 upon said land, and may at his option keep fully insured
 against all risks by fire the buildings which are now and
 may be hereafter erected thereon, and such payment shall
 be allowed with interest thereon at the rate of one per cent
 per month.

And the cost of foreclosure and sale, counsel fees, and
 all payments herein provided for, are and shall be a charge

upon the property described herein, and repayable on demand, and payable out of the proceeds of the sale thereof.

IN WITNESS WHEREOF, the said Mortgagor,.....
....., has hereunto set.....hand....and seal....,
the day and year first above written.

..... (Seal.)
..... (Seal.)
..... (Seal.)

STATE OF CALIFORNIA, }
County of..... } ss.

On this.....day of....., A. D. one thousand nine
hundred and....., before me.....,
a Notary Public in and for said County and State, residing
therein, duly commissioned and sworn, personally appeared
.....
.....
.....
known to me to be the person whose name is subscribed
to and who executed the within instrument, and he ac-
knowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and
affixed my official seal at my office in the.....
County of....., the day and year in this certificate
first above written.

.....
Notary Public in and for the County of.....,
State of California.

Commission expires....., 191..

Section 665.—RULES WHICH APPLY TO CHATTEL MORTGAGES.—The law provides how a mortgage of personal property must be made, and because this kind of mortgage is on movable property, subject to transportation from one place to another, the law makes certain strict rules which must be applied to the making of every chattel mortgage in this State. A mortgage of personal property is void as against creditors of the mortgagor, unless it is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors; and a mortgage without this affidavit is also void as against subsequent purchasers and

encumbrancers of the property who become such in good faith and for value. The law also provides that a mortgage of personal property, to be valid against creditors of the mortgagor, or against subsequent purchasers or encumbrancers in good faith and for value, must be acknowledged, or proved, certified, and recorded in like manner as deeds of real property.

Civil Code, Section 2957.

Section 666.—FORM OF CHATTEL MORTGAGE.—

A good form of mortgage on personal property is as follows, the blank spaces to be filled in with the proper dates, names, amounts, and descriptions:—

THIS MORTGAGE made the.....day of....., in the year 191.., by.....
by occupation a....., Mortgagor,
to....., by occupation a
....., Mortgagee.

WITNESSETH: That the Mortgagor mortgages to the Mortgagee all that certain personal property, with the increase thereof, situated in.....County, State of California, and more particularly described as follows, to-wit:—

.....
(Here insert description of property.)
.....
.....
.....

.....
as security for the payment to the said Mortgagee of the sum of.....Dollars, Gold Coin of the United States, on the.....day of....., 191.., with interest thereon at the rate of.....per cent per annum, payable semi-annually, according to the terms and conditions of a certain promissory note of which the following is a copy:—

....., Cal., , 191..
.....after date.....
for value received,.....promise to pay.....
....., or order, at.....
.....Dollars, with interest from....., at the rate of.....
per cent per annum, payable semi-annually, principal and

interest payable in United States Gold Coin. Interest, if not paid when due, to be added to the principal and bear interest at the same rate until paid.

.....
.....
.....
\$.....

This mortgage is also made as security for all other sums now due or that may hereafter become due on account or otherwise from the mortgagor to the mortgagee. It is also agreed that in case the mortgagee should bring suit to foreclose this mortgage, upon filing the complaint he shall be allowed a reasonable attorney fee, the same to be secured by this mortgage.

It is also agreed that if the mortgagor shall fail to make any payment as in said promissory note or in this mortgage provided, or if the mortgagor shall sell the said property herein mortgaged without the written consent of the mortgagee, or remove the same from the County of..... or, if the mortgagee shall hereinafter deem himself insecure, then in either of the above events the mortgagee may take possession of the said personal property, using all necessary force so to do, and immediately proceed to sell the same in the manner provided by law, and without foreclosure, and from the proceeds may pay the whole amount due the said mortgagee, as specified in said note and mortgage.

Signed and executed in the presence of
.....

..... (Seal.)
..... (Seal.)
..... (Seal.)

STATE OF CALIFORNIA, }
County of..... } ss.

.....
....., the mortgagor...in the foregoing mortgage named, and.....
the mortgagee in said mortgage named, being duly sworn, each for himself doth depose and say that the aforesaid mortgage is made in good faith and without any design to hinder, delay, or defraud any creditor or creditors.

..... (Seal.)
..... (Seal.)
..... (Seal.)

Subscribed and sworn to before me this.....day
of....., 191...

.....
Notary Public in and for.....County, California.
STATE OF CALIFORNIA, }
County of..... } ss.

On this.....day of....., 191.., before me, a
Notary Public in and for the County of....., residing
therein, duly commissioned and sworn, personally appeared
....., known to me to
be the person described in, whose name is subscribed to,
and who executed the within instrument, and he acknowl-
edged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my official seal at my office in the said
County of....., the day and year in this certificate
first above written.

.....
Notary Public in and for the County of.....,
State of California.
Commission expires....., 191..

Section 667.—DEED AS SECURITY AND AGREEMENT TO DEED BACK.—When a deed of property is given as security for a note, and a written agreement is given to the maker that the property will be deeded back to him when the note is paid, the transaction constitutes a mortgage, and nothing more. Many lawsuits have occurred, where the holder of such a deed has claimed to be the absolute owner of the property, but the courts have invariably held that it is nothing more than a mortgage, and that the holder must bring a foreclosure suit upon it, just the same as if it were a mortgage in the ordinary terms.

Section 668.—LAWFUL INTEREST.—There is no law against usury in California. A note may specify any rate of interest, and it will be allowed, according to the terms of the note, until the entry of judgment in a suit to collect the note.

Civil Code, Section 1918.

Section 669.—LEGAL RATE WHERE NO INTEREST SPECIFIED.—If a note does not specify any rate, interest is payable on it at the rate of seven per cent per annum after the money becomes due. Thus, if a note is made payable in sixty days, which does not specify any rate of interest, the legal rate of seven per cent is payable on it, beginning with the termination of the sixty days. If part of the note is paid in sixty days, no interest is payable except on so much of it as remains unpaid. In the computation of interest for a period less than a year, 360 days are deemed to constitute a year.

Civil Code, Section 1917.

Section 670.—COMPOUND INTEREST.—The maker of a note may lawfully agree, and may insert in the note, that if the interest is not punctually paid it shall become a part of the principal, and thereafter bear the same rate of interest as the principal debt.

Civil Code, Section 1919.

Section 671.—INTEREST ON JUDGMENT.—Interest is payable on judgments recovered in the courts of this State at the rate of seven per cent per annum, but such interest cannot be compounded in any manner.

Civil Code, Section 1920.

Section 672.—WHO MUST PAY TAXES ON MORTGAGE.—The provision of the Constitution, prohibiting the making of any contract for the mortgagor to pay the taxes, has been repealed. The mortgagee and mortgagor may now, make any agreement they please about the payment of the taxes, and it is lawful to provide in the mortgage that the mortgagor shall pay the taxes on the mortgage.

Section 673.—INSURANCE ON MORTGAGED BUILDINGS.—Either the mortgagor or mortgagee may keep the buildings on the land insured. A mortgage generally provides that the mortgagee may insure the buildings, and the mortgagor must repay the amount paid as premiums, with interest.

Section 674.—ATTORNEY FEES.—There is no lien on mortgaged property for attorney fees, unless the mortgage expressly so provides.

Section 675.—MORTGAGE FOR FUTURE ADVANCES.—A mortgage may be made which will cover and secure not only a sum of money paid in hand, but also future advances of the mortgagee to the mortgagor. Such a mortgage is good, and avoids the necessity of a number of mortgages where money is advanced at different times to the same person.

Section 676.—FIRST AND SECOND MORTGAGES.—A mortgage properly executed and recorded takes precedence of other mortgages subsequently placed on the same property. If the property is sold under foreclosure, the first mortgage must be first paid.

Section 677.—IN WHAT COURT SUIT MUST BE BROUGHT TO FORECLOSE MORTGAGE.—A suit to foreclose a mortgage on personal property can be brought in either the Justice Court or the Superior Court, if neither the amount of the lien nor the value of the property is as much as \$300. If the mortgage lien is as much as \$300, or if the value of the property mortgaged is \$300 or over, the suit to foreclose the mortgage must be brought in the Superior Court. All suits to foreclose mortgages on real property must be brought in the Superior Court.

Section 678.—WHEN MORTGAGE IS OUTLAWED.—A mortgage is outlawed four years after it becomes due. A suit to foreclose a mortgage must be commenced within four years after it is due, otherwise the suit cannot be maintained.

Code of Civil Procedure, Section 337.

Section 679.—RENEWAL OF NOTE DOES NOT RENEW MORTGAGE.—When a note secured by a mortgage becomes barred by the statute of limitations, the lien created by the latter is extinguished, and a subsequent renewal of the note, while creating the debt anew, does

not revive or continue the mortgage. (Decided by the Supreme Court of California, in the case of Kern Valley Bank vs. Koehn, which decision is printed in Volume XXXIX of California Decisions, page 138.)

Section 680.—WHAT PROPERTY CAN BE SOLD TO SATISFY MORTGAGE.—Only so much of the mortgaged property can be sold as will bring enough to pay the debt and the costs and expenses of foreclosure. Therefore, neither real estate nor personal property will be sold in one lot, to satisfy a mortgage debt, if it appears that a sale of a part only will bring enough to pay the debt and costs and expenses.

Section 681.—ORDER IN WHICH PROPERTY MUST BE SOLD.—As a general rule, in the sale of mortgaged property under foreclosure, where the mortgage covers both real and personal property, the court in its decree of foreclosure will direct that the personal property be sold first. When the sale is of real property, consisting of several known lots or parcels, they must be sold separately. The judgment debtor, if present at the sale, may also direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels, or of articles which can be sold to advantage separately, and the Sheriff must follow such directions.

Code of Civil Procedure, Section 694.

Section 682.—COSTS OF FORECLOSURE.—The costs of foreclosure, including reasonable attorney fees, when provided for in the mortgage, are taxed to the mortgagor, and must be paid out of the proceeds of the sale of the mortgaged premises.

Section 683.—WHO MAY BUY AT FORECLOSURE SALE.—Any person may buy in the property at a foreclosure sale, except the officer making the sale, or his deputy. The mortgagee may buy in the property, if he will bid higher than other bidders, or if no one else appears to bid.

Section 684.—CERTIFICATE OF SALE.—The officer making the sale gives to the purchaser a certificate of sale, containing a particular description of the real property sold, the price bid for each distinct lot or parcel, the whole price paid, and when the property is subject to redemption the certificate must so state. And when the judgment under which the sale has been made is payable in a specified kind of money or currency, the certificate must specify the same as the money or currency in which redemption may be made. Besides giving to the purchaser the certificate of sale, a duplicate of such certificate must be filed by the officer in the office of the Recorder of the county. If the property sold is personal property, capable of manual delivery, the officer must actually deliver the property to the purchaser upon payment of the purchase price.

Code of Civil Procedure, Sections 698, 700.

Section 685.—ASSIGNMENT OF CERTIFICATE OF SALE.—The certificate of sale received by the purchaser can be sold and assigned by him, and such assignment passes his right and title. The assignment should be recorded, and a notice of the assignment should be served on the officer who made the sale.

Section 686.—WHAT PROPERTY CAN BE REDEEMED.—There is no redemption from sales of personal property. The purchaser acquires an absolute title to personal property. When a leasehold interest in real property is sold, and the lease has less than two years to run, there is no redemption from the sale. In all other cases the property is subject to redemption.

Code of Civil Procedure, Section 700.

Section 687.—TIME FOR REDEMPTION.—The property sold may be redeemed from the purchaser at any time within twelve months after the sale. The judgment debtor has the whole of the last day in which to redeem.

Code of Civil Procedure, Section 702.

Section 688.—WHO MAY REDEEM.—The persons who may redeem in this State are, the judgment debtor, or

his successor in interest, in the whole or any part of the property; and a creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to the lien on which the property was sold.

Code of Civil Procedure, Section 701.

Section 689.—HOW TO REDEEM.—The law provides, that the judgment debtor, or other redemptioner, who wishes to redeem, must pay the purchaser the amount of his purchase, with one per cent per month thereon up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid on the property after purchase, and interest on such amount. The purchaser from whom redemption is made may also be a creditor having a lien other than the judgment under which he purchased, and if this lien was prior to the lien of the person who seeks to redeem from him, he must be paid the amount of his lien, with interest, in addition to the amount of his purchase. When property has been once redeemed, it may be again redeemed by another person within sixty days after the last redemption, by paying the amount paid on the last redemption, with two per cent additional, and any assessment or taxes on the property which the last redemptioner may have paid, and interest; and other redemptioners may in like manner redeem again and again, by making similar payments. Written notice of redemption must be given to the officer making the sale and a duplicate filed with the Recorder of the county. No form of written notice is here given, for the reason that it is not safe for a redemptioner to attempt to fill out a blank notice and use it himself, without the services of a lawyer. Knowing his rights, the redemptioner should seek the services of a competent lawyer, to prepare and serve the necessary notice and make the proper tenders of money in a lawful manner.

Code of Civil Procedure, Sections 702, 703.

Section 690.—THE SHERIFF'S DEED.—If no redemption is made within twelve months after the sale, the

purchaser or his assignee is entitled to a Sheriff's deed. If redeemed, whenever sixty days have elapsed, and no other redemption has been made, and the time for redemption has expired, the last redemptioner or his assignee is entitled to a Sheriff's deed. But in all cases the judgment debtor has the entire period of twelve months from the date of the sale to redeem the property. If the debtor redeems, the effect of the sale is terminated, and he is restored to his estate.

Code of Civil Procedure, Section 703.

Section 691.—DEFICIENCY JUDGMENT.—If after the sale of mortgaged property the proceeds are insufficient to pay the debt, and a balance still remains due, a judgment is docketed by the clerk of the court for such balance against the defendants personally liable for the debt. Such deficiency judgment then becomes a lien against the real estate of the judgment debtor.

Code of Civil Procedure, Section 726.

Section 692.—POSSESSION OF PROPERTY DURING FORECLOSURE PROCEEDINGS.—Generally the mortgagor remains in possession of the mortgaged property during foreclosure proceedings, and it is only under peculiar circumstances that the court will disturb his possession. Where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or where it appears that the conditions of the mortgage have not been performed, and that the property is insufficient to discharge the mortgage debt, the Superior Court has the power to appoint a Receiver, into whose hands the property is placed while the suit is going on.

Code of Civil Procedure, Section 564.

Section 693.—POSSESSION OF REAL PROPERTY DURING TIME FOR REDEMPTION.—It has been shown that there is no redemption of personal property sold under foreclosure, but that a redemption of real property is allowed, and that the time within which redemption may be made is twelve months. During this period of twelve months allowed for redemption the mortgagor has the right

to remain in possession of the mortgaged premises, and during this time he is entitled to use the same and take the proceeds thereof.

Section 694.—RIGHT TO RENTS AND PROFITS.—

Where the mortgaged property is occupied by a tenant, the purchaser, from the time of the sale until redemption, is entitled to receive the rents or the value of the use and occupation of the property. Where a person other than the judgment debtor redeems, he is entitled to receive the rents until another redemption takes place. But all rents or profits collected by the judgment creditor or by a purchaser must be credited upon and deducted from the redemption money to be paid.

Code of Civil Procedure, Section 707.

Section 695.—WHO MUST PAY FOR IMPROVEMENTS MADE DURING FORECLOSURE PROCEEDINGS.—

Sometimes the mortgagee gets possession of the premises, either by consent or by force, and succeeds in retaining such possession during foreclosure proceedings. Then the question arises, Who is to pay for improvements to the property made by the mortgagee in possession? In California the law is, that where a mortgagee is in possession, and makes improvements without the consent of the mortgagor, he will not be allowed anything for them further than is proper to keep the premises in necessary repair; therefore, if a mortgagee in possession should build a new house on the land, or clear uncultivated land and put it into a state of cultivation, or make any other improvements not necessary to keep the premises in repair, he must stand the expense himself, and cannot recover from the mortgagor or any redemptioner the cost of such improvements. The reason for this rule is, that while unreasonable improvements may be of benefit to the estate, yet the mortgagee has no right to impose them upon the owner and thus increase the burden of redeeming.

Section 696.—HOW TO COLLECT A NOTE WHEN MAKER IS DEAD.—If the maker of a note dies before

it becomes due, the holder may collect it from the maker's estate. If the estate is of less value than \$10,000, a claim for the amount due on the note must be presented to the executor or administrator within four months after the first publication of notice to creditors. If the estate is of a value of \$10,000 or over, a claim for the amount due on the note must be presented to the executor or administrator within ten months after the first publication of notice to creditors. If the executor or administrator allows the claim, it is then presented to the Judge of the Probate Court for his allowance, and when allowed it is filed in the Clerk's office, and becomes an acknowledged debt of the estate, which the executor or administrator will be bound to pay in the course of the administration of the estate. When a claim is rejected, either by the executor or administrator, or by the Judge of the court, the holder must bring suit against the executor or administrator within three months after the date of its rejection, if it be then due, or within two months after it becomes due, otherwise the claim will be forever barred.

Code of Civil Procedure, Section 1498.

Section 697.—EXCUSE FOR NOT PRESENTING CLAIM IN TIME.—When the claimant was out of the State during the publication of notice to creditors, and makes affidavit to the fact, and that he had no notice, this will be an excuse for not presenting his claim against an estate in time, and he will be allowed to present the claim to the executor or administrator at any time before a decree of distribution of the estate is entered.

Code of Civil Procedure, Section 1493.

Section 698.—FORECLOSURE OF MORTGAGE WHEN THE MAKER IS DEAD.—A mortgage may be foreclosed, even though the maker is dead, by a suit against the executor or administrator of his estate. But a claim against the estate must be presented to the executor or administrator if the mortgagee wishes to recover attorney fees. If he does not present his claim for the amount due,

he may still foreclose his mortgage, but he cannot recover fees paid to his attorney.

Section 699. — FORECLOSURE OF MORTGAGE PAYABLE IN INSTALLMENTS.—If the debt for which the mortgage is held is not all due, as where a note is payable in installments, and foreclosure is had for failure to pay an installment due, so soon as sufficient of the property has been sold to pay the amount due, with costs, the sale must cease; and afterwards, as often as more becomes due, for principal or interest, the court may, on motion, order more to be sold. But if the property cannot be sold in portions, without injury to the parties, the whole may be ordered to be sold in the first instance, and the entire debt and costs paid; but where this is done there will be a rebate of interest on installments not yet due.

Code of Civil Procedure, Section 728.

Section 700. — COLLECTION OF LOST OR DESTROYED NOTE.—The amount due on a note may be collected, notwithstanding the note may have been lost or destroyed. If the note is lost or destroyed, then the holder must give a bond, executed by himself and two sufficient sureties, to indemnify the party paying the note against any lawful claim which any other person may make upon it.

Civil Code, Section 3137.

Section 701. — NOTE MADE BY PARTNERS.—A note may be made by partners for the debts of the firm, or in the usual course of business of the firm, for goods, or advancements, or as security for a loan to the firm. One partner may execute the note in the firm name, and all the partners will be bound by it, for each partner has an equal right, so far as third parties are concerned, to bind the firm by acts and conduct in the usual course of its business.

Section 702. — LIABILITY OF PARTNERS ON PARTNERSHIP NOTE.—Every general partner is liable to third persons for all the obligations of the partnership, jointly with his co-partners. Therefore, a promissory note, executed for the firm, makes each partner liable to pay the note. The partnership property may be taken for the pay-

ment of the debt, and the property of each partner may also be taken, if the property of the firm is not sufficient.

Section 703.—ASSIGNMENT OF MORTGAGE.—A mortgage may be assigned, and the assignee will then have the same rights as the original mortgagee. The assignment must be in writing, and must be signed and acknowledged by the person making the assignment. The following is a good form of assignment of mortgage, which must be acknowledged in the same manner as a mortgage is acknowledged:

ASSIGNMENT OF MORTGAGE.

Know All Men by These Presents:—That.....
of the County of....., State of California, the
party of the first part, for and in consideration of the sum
of.....Dollars, Gold Coin of the United States of
America, to him in hand paid by.....,
of the County of.....State of California,
the party of the second part, the receipt whereof is hereby
acknowledged, does by these presents, grant, bargain, sell,
assign, transfer, and set over, unto the said party of the sec-
ond part, a certain indenture of mortgage bearing date the
.....day of....., 191..., made and executed by
..... to the said party of the first part,
and recorded in the office of the County Recorder of the
County of....., State of California, in book.....
of mortgages, page....., on the.....day of.....,
191..., at..... minutes past.... o'clockM.

Together with the promissory note therein described, and the money due and to grow due thereon, with the interest.

And the said party of the first part does hereby make, constitute, and appoint the said party of the second part his true and lawful attorney, irrevocable, in his name or otherwise, but at the proper costs and charges of the said party of the second part, to have, use, and take all lawful ways and means for the recovery of the said money and interest; and in case of payment to discharge the same as fully as the said party of the first part might or could do if these presents were not made.

In witness whereof the said party of the first part has hereunto set his hand and seal this.....day of....., 191...

..... (Seal.)

(Acknowledgment in usual form.)

PART IV.

ATTACHMENTS, JUDGMENTS, AND EXECUTIONS.

Attachments.

Section 704.—ATTACHMENT OF DEBTOR'S PROPERTY.—A creditor, in a suit to collect a bill, account, or promissory note not secured by mortgage, can attach the property of his debtor. The court in which the suit is brought will issue the writ of attachment, to be placed in the hands of an officer for service, at the time the summons is issued in the suit, or at any time afterward before judgment is given. Always, the plaintiff in the suit must give bond, usually in the sum of two hundred dollars, when the suit is in the Superior Court, to the effect that if the defendant recover judgment the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the bond. The bond must be signed by two or more sureties. Upon the filing of the bond the Clerk of the Superior Court, if the suit is in that court, or the Justice of the Peace, if the suit is before a Justice, will issue a writ of attachment. The bond in a Justice Court is usually in the sum of fifty dollars.

A writ to attach the property of the defendant must be issued by the Justice at the time of, or after issuing summons, in actions in which the sum claimed exclusive of interest exceeds ten dollars.

Act of the Legislature, approved March 20, 1911.
Code of Civil Procedure, Sections 538, 539, 867.

Section 705.—WHAT PROPERTY CAN BE ATTACHED.—Real estate belonging to the debtor, whether standing upon the records of the county in his name or in the name of another; personal property of all kinds; corporation stocks or shares; money owing to the debtor by any person,—all these may be attached as security for the payment of the judgment which the creditor expects to obtain when he sues the debtor to collect the amount due from him.

Section 706.—WHAT PROPERTY IS EXEMPT FROM ATTACHMENT OR EXECUTION.—The law of California singles out certain property of the debtor, and says that it shall not be taken for a debt. This it does to protect the unfortunate and the improvident, and to secure to the family of the debtor provision at least for temporary wants. Therefore, the law states that certain property of the debtor shall be exempt, no matter how pressing his debts or how eager his creditors may be. An attachment cannot hold, nor can a sale on execution be had, of any of the following property, if the owner objects: (1)—Chairs, tables, desks, and books, to the value of \$200, belonging to the judgment debtor. (2)—Necessary household, table, and kitchen furniture, belonging to the judgment debtor, including one sewing-machine, stove, stovepipes, and furniture, wearing apparel, beds, bedding, and bedsteads, hanging pictures, oil paintings and drawings, drawn or painted by any member of the family, and family portraits and their necessary frames, provisions and fuel actually provided for individual or family use sufficient for three months, and three cows and their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month; also one piano, one shotgun, and one rifle. (3)—The farming utensils or implements of husbandry of the judgment debtor, not exceeding in value the sum of one thousand dollars; also, two oxen, or two horses, or two mules, and their harness, one cart or buggy and two wagons, and food for such oxen, horses, or mules for one month;

also, all seed, grain, or vegetables actually provided, reserved, or on hand for the purpose of planting or sowing at any time within the ensuing six months not exceeding in value the sum of two hundred dollars; 75 bee-hives; and one horse and vehicle belonging to any person who is maimed and crippled, if same is necessary in his business. (4)—The tools or implements of a mechanic or artisan, necessary to carry on his trade; the notarial seal, records, and office furniture of a Notary Public; the instruments and chest of a surgeon, physician, surveyor, or dentist, necessary to the exercise of his profession, with his professional library, and necessary office furniture; the professional libraries of attorneys, judges, ministers of the gospel, editors, school-teachers, and music teachers, and their necessary office furniture, including one safe and one typewriter; the musical instruments of music teachers actually used by them in giving instructions; all the indexes, abstracts, books, papers, maps, and office furniture of a searcher of records, necessary to be used in his profession; the typewriters, or other mechanical contrivances employed for writing in type, actually used by the owner thereof for making his living; also, one bicycle, when the same is used by its owner for the purpose of carrying on his regular business, or when the same is used for the purpose of transporting the owner to and from his place of business. (5)—The cabin or dwelling of a miner, not exceeding in value the sum of five hundred dollars; also his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements and appliances, necessary for carrying on any mining operations, not exceeding in value the aggregate sum of five hundred dollars; and two horses, mules, or oxen, with their harness, and food for such horses, mules, or oxen for one month, when necessary to be used on any whim, windlass, derrick, car, pump, or hoisting gear; and also his mining claim, actually worked by him, not exceeding in value the sum of one thousand dollars. (6)—Two horses, two oxen, or two mules, and their harness, and one cart

or wagon, one dray or truck, one coupe, one hack or carriage, for one or two horses, by the use of which a cartman, drayman, truckman, huckster, peddler, hackman, teamster, or other laborer habitually earns his living; and one horse, with vehicle and harness or other equipments, used by a physician, surgeon, constable, or minister of the gospel, in the legitimate practice of his profession or business; with food for such oxen, horses, or mules, for one month. (7)—One fishing boat and net, not exceeding the total value of five hundred dollars, the property of any fisherman, by the lawful use of which he earns his livelihood. (8)—Poultry not exceeding in value seventy-five dollars. (9)—The wages and earnings of all seamen, sea-going fishermen, and sealers, not exceeding three hundred dollars, regardless of where or when earned, and in addition to all other exemptions otherwise provided by any law. (10)—The earnings of the judgment debtor for his personal services rendered at any time within thirty days next preceding the levy of execution or attachment, when it appears by the debtor's affidavit or otherwise that such earnings are necessary for the use of his family, residing in this State, supported in whole or in part by his labor; but where debts are incurred by any such person, or his wife or family, for the common necessities of life, or have been incurred at a time when the debtor had no family residing in this State supported in whole or in part by his labor, the one-half of such earnings above mentioned is nevertheless subject to attachment or execution, to satisfy debts so incurred. (11)—The shares held by a member of an incorporated homestead association, not exceeding in value one thousand dollars, if the person holding the shares is not the owner of a homestead under the laws of this State. (12)—All the nautical instruments and wearing apparel of any master, officer, or seaman of any steamer or other vessel. (13)—All fire engines, hooks, and ladders, with the carts, trucks, and carriages, hose, buckets, implements, and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under any law of

this State. (14)—All arms, uniforms, and accoutrements required by law to be kept by any person, and also one gun, to be selected by the debtor. (15)—All court-houses, jails, public offices and buildings, lots, grounds, and personal property; the fixtures, furniture, books, papers, and appurtenances belonging and pertaining to jails and public offices of any county of this State; and all cemeteries, public squares, parks, and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging, owned or held by any town or incorporated city, or dedicated by such town or city to health, ornament, or public use, or for the use of any fire or military company organized under the laws of this State. (16)—All material not exceeding one thousand dollars in value, purchased in good faith for use in the construction, alteration, or repair of any building, mining claim, or other improvements, as long as in good faith the same is about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement. (17)—All machinery, tools, and implements necessary in and for boring, sinking, putting down, and constructing surface or artesian wells, also, the engines necessary for operating such machinery, implements, tools, etc.; also, all trucks necessary for the transportation of such machinery, tools, implements, engines, etc.; provided, that the value of all the articles exempted under this subdivision shall not exceed one thousand dollars. (18)—All moneys, benefits, privileges, or immunities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars, and if they exceed that sum, a like exemption exists, bearing the same proportion to the moneys, benefits, privileges, and immunities so accruing or growing out of such insurance that five hundred dollars bears to the whole annual premiums paid. (19)—Shares of stock in any building and loan association to the value of one thousand dollars. No article, however, or species of property mentioned above, is exempt from execution

issued upon a judgment recovered for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon. (20)—A United States homestead cannot be attached or sold under execution for any debt contracted prior to proving up and obtaining title to the land. (21)—All money received by any person, a resident of the State, as a pension from the United States government, whether the same shall be in the actual possession of such pensioner, or deposited, loaned or invested by him.

Act of the Legislature, in effect May 22, 1907.

Section 707.—HOMESTEAD MONEY EXEMPT.—

The law with reference to State homesteads has already been stated in preceding sections, and to what extent such homesteads are exempt from attachment or execution. It should be added, that if the homestead be sold by the owner, the proceeds arising from such sale, to the extent of the value allowed for a homestead exemption, as above stated, will be exempt from attachment for a period of six months from the time of the sale. If, for instance, the husband and wife should sell their homestead for five thousand dollars, they can take that money at any time within six months and put it into another homestead, and it will be also exempt when another declaration of homestead has been filed. The money will be exempt for six months, so as to give an opportunity to select and purchase another homestead with it.

Act of the Legislature, approved February 15, 1911.

Section 708.—MORTGAGED PROPERTY MAY BE ATTACHED.—Property, real or personal, which is mortgaged to another person, may be attached in a suit by a creditor, but the lien of the attachment is subject to the mortgage.

Section 709.—CREDITOR LIABLE FOR UNLAWFUL ATTACHMENT.—A creditor who makes an unlawful attachment, or causes it to be made, will be liable in damages for all injury done to the person whose property

is attached. If the holder of an obligation sues upon it, and causes an attachment to be issued and placed upon property of the debtor, as upon household furniture, or farming utensils, or horses, or cows, exempt by law from execution, he will be liable for all damages sustained by the unlawful seizure. His sureties on the attachment bond are liable to the extent of their bonds only, but he is liable to the full extent of the injury. The debtor may have the attachment released, upon the ground that the property attached is exempt, and bring a suit for damages against the creditor and his bondsmen.

Section 710.—CREDITOR ATTACHING PERSONAL PROPERTY MUST PAY MORTGAGE.—It has already been shown that mortgaged property may be attached by a creditor of the owner, subject to the mortgage. Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of a mortgagor; but before the property can be taken, the officer levying the attachment or execution must pay or tender to the mortgagee the amount of the mortgage debt and interest, or must deposit the money with the County Clerk or Treasurer, payable to the order of the mortgagee.

Civil Code, Section 2969.

Section 711.—GARNISHMENT.—There are certain effects of a debtor which cannot be seized and taken into the custody of the officer, but which may still be rendered liable to the payment of the debt, such as money owing to the debtor by a third person, or property in the hands of a third person belonging to the debtor. In a suit by the creditor against the debtor, the officer serves a notice upon the person owing the debtor, or having property of the debtor in his hands, that such property is attached, and this is called garnishment. The person upon whom the notice is served is called the garnishee. Thereafter, he cannot pay his debt to the defendant, nor deliver the property to him, but must hold it to await the result of

the suit. In this State, when required by the officer the garnishee must make a statement of the amount owing by him to the defendant, or showing the character and description of the property in his hands belonging to the defendant.

Section 712.—FOR WHAT PROPERTY GARNISHEE LIABLE.—The garnishee will be held liable for all personal property in his hands belonging to the defendant which is capable of being seized and sold upon execution. The garnishee will be liable for money in his hands belonging to the defendant, and a garnishment may be levied upon a bank or corporation, as well as upon an individual. The property must be in the actual possession of the garnishee, or within his control, so that he may be able to turn it over to the officer on execution.

Section 713.—MONEY DUE AS SALARY TO PUBLIC OFFICER.—The salary of a public officer can be attached or garnished. When a judgment is obtained against a public officer, a transcript of it may be filed with the State Controller or County or City Auditor, and so much of the officer's salary as is not exempt from execution shall be then paid over to the judgment debtor. (Statutes of 1903, page 362.) A decision has been made by the Supreme Court in a test case under the statute of 1903. A suit was brought in San Francisco to compel the Auditor to allow the salary of a public officer, but he refused on the ground that a part of the money had been attached under the new law. The Supreme Court decided that the law is constitutional, and that it will stand good as to all public officers and employees created or provided for by the Legislature. Therefore, when the Auditor pays the money due, from the State, or city, or county, into court, so much as is not exempt from execution must be paid to the judgment creditor. (Decided by the Supreme Court of California, in the case of *Ruperich vs. Baehr*, which decision is printed in Volume 27 of California Decisions, No. 1465, page 359.)

Section 714.—MONEY IN THE HANDS OF THE LAW.—Money in the hands of the law, as money in the hands of a sheriff, or constable, or money deposited with a clerk of court to wait the determination of a suit, or money in the hands of a Receiver appointed by the court, cannot be taken by garnishment or attachment; for all such property is in the custody of the law, and until the law has done with it, no interference from any other source will be tolerated or allowed.

Section 715.—ATTACHMENT OF PARTNERSHIP PROPERTY.—Partnership property may always be attached for partnership debts. But a more serious question arises, where one partner owes debts and is sued by his creditor, outside of the partnership business. The decisions of the courts in different States have not been uniform, but in California the law appears to be settled, that a creditor of one partner may have an attachment levied upon the partnership property. The sheriff must take the whole property into his possession, but he cannot sell on execution the interests of both partners; he can only sell under the execution the interest of the partner against whom the judgment was obtained.

Section 716.—DISSOLUTION OF ATTACHMENT.—If an attachment has been improperly or irregularly issued, by the court in which the suit was brought, it will be discharged on motion of the defendant. If an attachment is issued in a case where the law does not provide for an attachment, or if the plaintiff's complaint does not state a cause of action, or if other necessary papers essential to obtain a Writ of Attachment are fatally defective, the attachment will be held to be improperly or irregularly issued and the defendant will have a right to ask for the discharge of the attachment.

Section 717.—BOND FOR RELEASE OF ATTACHED PROPERTY.—The defendant in a suit, whose property is attached, may have the attachment released by

giving a bond, in a sum to be fixed by the court, with at least two sureties, as security that the property released will be re-delivered to the proper officer if the plaintiff recover a judgment in the action; or that, if the property is not turned over to the officer, that the sureties will pay to the plaintiff the full value of the property released.

Code of Civil Procedure, Section 555.

Section 718.—LIEN OF ATTACHMENT.—The attachment will be a lien upon all real property attached for a period of three years after date of levy, unless sooner released or discharged by dismissal of the suit or by entry of judgment. The time may be extended, by the court, upon motion made not less than five nor more than sixty days before the expiration of the three years.

Act of the Legislature, approved March 25, 1909.

Judgments and Executions.

Section 719.—JUDGMENTS.—Whether any property is attached or not, a judgment may be obtained for the amount due, and costs of suit, and upon the judgment an execution is issued from the court in which suit is brought, directed to the Sheriff, and commanding that officer to sell enough of the debtor's property to pay the debt. All property not exempt from execution may be sold by the Sheriff and applied to the payment of the judgment. All sales of property under execution are made at public auction to the highest bidder.

Section 720.—JUDGMENT A LIEN ON REAL PROPERTY.—When a judgment is rendered in a suit in the Superior Court, the Clerk of the Court enters the judgment in his official records, and makes up what is called a Judgment Roll, attaching together and filing the pleadings and certain other papers, for that purpose. Immediately after filing the Judgment Roll, the Clerk of the Court makes the proper entry of the judgment in the docket kept by him;

and from the time the judgment is docketed it becomes a lien upon all the real property of the judgment debtor not exempt from execution in the county, owned by him at the time or which he may afterward acquire, until the lien ceases.

Code of Civil Procedure, Sections 670, 671.

Section 721.—HOW LONG JUDGMENT LIEN CONTINUES.—The lien of a judgment docketed in the Superior Court continues for five years, on real property of the judgment debtor in the county.

Section 722.—JUDGMENT LIEN ON PROPERTY IN ANOTHER COUNTY.—A transcript of the original docket of the judgment, certified by the Clerk, may be filed with the Recorder of any other county, and from the time of the filing the judgment becomes a lien upon all the real property of the judgment debtor not exempt from execution in such other county, and this lien, unless the judgment be previously satisfied, continues for two years.

Code of Civil Procedure, Section 674.

Section 723.—HOW JUSTICE COURT JUDGMENT IS MADE LIEN ON REAL PROPERTY.—Reference has been made in the preceding Sections to the lien of judgments obtained in the Superior Court. But a lien upon the real property of the debtor may also be secured on a Justice Court judgment, by following certain requirements of the law of California. A person obtaining a judgment in the Justice Court, if he wishes to make it a lien upon the real property of his debtor, must ask the Justice to give him an abstract of the judgment, which it is the duty of the Justice to furnish on demand. This abstract of the judgment must be filed in the office of the Recorder of the county in which the land of the debtor is situated, and when so filed, and from the time of filing, the judgment becomes a lien on such property.

A judgment rendered in a Justice's court creates no lien upon any lands of the defendant, unless such an abstract

is filed in the office of the Recorder of the county in which the lands are situated. When so filed, and from the time of filing, the judgment becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, owned by him at the time, or which he may afterwards, and before the lien expires, acquire. The lien continues for two years, unless the judgment be previously satisfied.

At any time before the expiration of two years from the time of filing such abstract of judgment, and while the judgment is yet in force or unsatisfied, a successive abstract of such judgment may be likewise filed, and it shall have the effect of continuing such lien for a further period of two years from the time of filing the subsequent abstract of judgment; provided, however, that no such lien shall continue or be in force after five years from the time of the rendition of such judgment.

Code of Civil Procedure, Sections 897, 900.

Act of the Legislature, approved March 20, 1911.

Section 724.—TIME WITHIN WHICH EXECUTION MAY ISSUE.—The party in whose favor judgment is given may, at any time within five years after the judgment is entered, have a writ of execution issued for its enforcement.

Section 725.—EXEMPTION MUST BE CLAIMED BY DEBTOR.—While the law exempts certain property of a judgment debtor from execution and forced sale, such exemption is a personal privilege, which may be waived by the debtor; and a failure to claim the property as exempt, when levied on to satisfy a judgment against him, within a reasonable time thereafter, is a waiver of the exemption right; and the officer selling exempt property without such claim of exemption is not liable for its value.

PART V.

LAST WILLS.

Section 726.—MAKING A WILL.—The law of California designs to encourage the making of wills, and whenever the last will and testament of a deceased person—who in his lifetime thus endeavored to direct the disposition of his property when he should have done with the business of this world—whenever such an instrument has come before the Supreme Court of this State, and has become the subject of attack by dissatisfied relatives, the law relative to the making of wills has always been liberally construed, with a sincere desire to carry out the intentions of the testator. The courts of late years have come to look with more or less suspicion upon the many attempts to break wills made in this State. Disgraceful scandals have been the aftermath of so many will contests, and bribery and perjury of witnesses such frequent circumstances, that the Supreme Court alone has been able to stem the tide of corruption which has followed many of California's rich men to the grave. Now, the frequent decisions of the Supreme Court in favor of the validity of wills, and the fearless rulings of some Judges of the Superior Court, setting aside verdicts of juries when evidently induced by passion and prejudice, are having a good effect. The number of will contests may not be decreased, as long as credulous clients have money to pay eager lawyers; but the people of California may at all events feel greater security in the irrevocable character of last wills and testaments. And whether a person be rich or poor, whether the estate disposed of by will be large or small, it is the intention of the law of California that the solemn act thus expressed shall be protected and enforced.

Section 727.—WHO MAY MAKE A WILL.—Every person in California over the age of 18 years, and of sound mind, may make a last will, and thus dispose of all his estate, real and personal.

Section 728.—WILL OF MARRIED WOMAN.—A married woman may dispose of all her separate property by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. The will of a married woman must be executed and proved in the same manner as other wills.

Civil Code, Section 1273.

Section 729.—WHAT MAY BE DISPOSED OF BY WILL.—Every estate and interest in real or personal property, to which heirs, husband, widow, or next of kin, if there were no will, might succeed, may be disposed of by last will; provided, the husband can only dispose of one-half of the community property by his will, the other half belonging to his wife at his death and not being subject to his will; and provided, also, that the wife can only dispose of her separate property by her will, or such of the community property as may have been set aside to her by the judgment of a court for her support and maintenance.

Civil Code, Sections 1401, 1402.

Section 730.—WHO MAY TAKE BY WILL.—Any person may take property by will, except the artificial persons known as corporations. A testamentary disposition of property cannot in this State be made to any corporation, except such as are formed for scientific, literary, or solely educational or hospital purposes; and except that property may lawfully be willed to charitable or benevolent societies or corporations for use by them in the furtherance of their designs. But no estate, real or personal, can be lawfully left to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, unless the will is executed at least thirty days

before the death of the testator; and the law provides that bequests for charitable uses must not collectively exceed one-third of the estate of the testator leaving legal heirs.

Civil Code, Sections 1275, 1313.

Section 731.—KINDS OF WILLS.—There are three kinds of wills recognized by the law of California—a nuncupative will; an olographic will; and a will signed by the testator and by attesting witnesses.

Section 732.—NUNCUPATIVE WILLS.—The kind of will called “nuncupative” is only made under peculiar and extraordinary circumstances. A person in actual military service in the field, or doing duty on a ship at sea, and in actual contemplation, fear, or peril of death, or in expectation of immediate death from an injury received the same day, may make a nuncupative will. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. To make a nuncupative will valid, and to entitle it to be admitted to probate, it must further appear that the estate bequeathed does not exceed in value the sum of one thousand dollars; and two witnesses who were present at the making of the will must prove it, and one of the witnesses must have been asked by the testator at the time to be a witness that such was his will.

Section 733.—OLOGRAPHIC WILLS.—An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of this State, and need not be witnessed. The law must be strictly followed in making such a will. It may be written on any kind of paper, and it is not required to be in any particular form; but it must be entirely in the testator’s handwriting. If a person, intending to make an olographic will, dictates to some one who writes the body of it for him and then signs it himself, it is not a valid will, for the law expressly declares that he must write it all himself. So, if a person

uses a blank form, and fills out the blanks in his own handwriting, and signs his name, yet the law has not been complied with, and the instrument is void as a will. Every word and every figure in it, to be a valid olographic will, must be in the handwriting of the person making it. If any part of it is in the handwriting of any other person, or if any part of it is printed, it will be illegal and invalid. In one case in California it was decided that nothing more than the figures "1880" in print, after "April 1" in the testator's handwriting, made the document illegal as an olographic will. Not only must the document be entirely in the handwriting of the person making an olographic will, but it must always be dated. If otherwise lawfully made, that is, written and signed by the testator himself, but with the date omitted, the paper is invalid as a will. As before stated, a will of this kind need not be in any particular form. It may even be in the form of a letter, and if it appears that the writer intended to thus make a testamentary disposition of his property, it will be considered as his last will and testament. When a will is thus lawfully made, entirely written, dated, and signed by the hand of the testator himself, it constitutes the most satisfactory manner in which a will can be made, and is less liable to the attacks of will-breaking lawyers than is a formal will, written and executed under the supervision of a legal adviser. For olographic wills are usually brief, whereas a will in the handwriting of a lawyer is apt to have its length gauged by the size of the estate or the amount of the fee; and, too, an olographic will is free from the technical terms and legal phrases which never cease to stir up controversies in the courts. For these reasons, an olographic will, when made by a person of ordinary intelligence, is the kind to be preferred.

Civil Code, Section 1277.

Section 734.—FORM OF OLOGRAPHIC WILL.—

The following is a form of olographic will, which meets the requirements of the law. The date, names, amounts, and

the signature must be filled in, and the whole written by the maker of the will alone:—

....., Cal.,, 191..
 I declare this to be my last will and testament. I give
 and bequeath to.....the sum of
Dollars; I give and bequeath to
the sum of.....
 Dollars; I give and bequeath to.....
 and.....all the residue of my
 property, of whatever kind and wherever situated, share
 and share alike.

.....
 The foregoing form will be as good as any other; and,
 indeed, any form is good as an olographic will, if the in-
 tention of the writer to make it his will appears in it, and
 the disposition which he desires to make of his property.

Section 735.—WILL ATTESTED BY WITNESSES.

—A will which is not in the handwriting of the maker must be executed and attested as follows: (1) It must be subscribed at the end by the testator himself, or some person in his presence and by his direction must subscribe his name to it; (2) The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the maker to them to have been made by him or by his authority; (3) The maker must, at the time of subscribing or acknowledging the will, declare to the attesting witnesses that the instrument is his will; (4) There must be two attesting witnesses to a will, and each of them must sign the will as a witness, at the end of it, at the testator's request and in his presence. The testator must either sign his name at the end of the will, or have it signed by some one in his presence and at his direction.

Civil Code, Section 1276.

Section 736.—GIFTS TO SUBSCRIBING WITNESSES.—All legacies and gifts of any kind, made or given in any will to a subscribing witness, are void, unless

there are two other competent subscribing witnesses to the will.

Civil Code, Section 1282.

Section 737.—HOW A WILL IS REVOKED.—The law declares what acts work the revocation of a will in this State.

A will is revoked by a later will, declaring the revocation of the prior one.

A will is revoked by being burned, torn, canceled, obliterated, or destroyed, with the intent and purpose of revoking it, by the testator himself, or by some person in his presence and by his direction.

When a will is canceled or destroyed by any other person than the testator, the direction of the testator, and the fact of such cancellation or destruction, must be proved by two witnesses.

A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Civil Code, Sections 1292, 1293, 1296.

Section 738.—REVOCATION BY MARRIAGE.—If after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or mentioned in the will so as to show an intention not to make provision for the child.

If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or mentioned in the will so as to show an intention not to make provision for her.

A will, executed by an unmarried woman, is revoked by her subsequent marriage, and is not revived by the death of her husband.

Civil Code, Sections 1298, 1299, 1300.

Section 739.—SHARE OF CHILD BORN AFTER THE WILL.—Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

Civil Code, Section 1306.

Section 740.—OMISSION TO PROVIDE FOR CHILDREN.—When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, the law declares that such child or the issue of such child must have the same share in the estate of the testator as if he had died intestate. But the law also provides that a child who has had his share of the estate advanced to him during the lifetime of the testator, even though not mentioned in the will, is not entitled to any more.

Civil Code, Sections 1307, 1309.

Section 741.—CHILDREN OF DEVISEE.—When any estate is devised to any child, or other relation of the testator, and the devisee dies before the testator, leaving lineal descendants, such descendants take the estate so given by the will in the same manner as the devisee would have done had he survived the testator.

Civil Code, Section 1310.

Section 742.—WHEN WILL TAKES EFFECT.—A will takes effect at the testator's death. It can have no effect to pass any title before his death.

Section 743.—WHEN LEGACIES ARE DUE.—Legacies are due to those entitled to them at the expiration of one year after the testator's death.

Section 744.—INTEREST ON LEGACIES.—Ordinary legacies bear interest from the time when they become due. A legacy to the testator's widow bears interest from the date of his death.

Section 745.—GROUNDS FOR CONTEST OF WILL.—The law specifies, as the grounds for the contest of a will, duress, menace, fraud, or undue influence; and, also, it is a common ground for the contest of a will, that the testator was not of sound mind. If advantage is taken of an old and feeble person, and the facts are misrepresented or concealed, or threats or fraudulent persuasions resorted to, by which a testator is fraudulently induced to exclude from his will the natural object of his bounty, whom he would otherwise have remembered and provided for, the law will interfere on behalf of the injured party and set the will aside. Yet it will require clear and convincing proof to set aside a will upon these grounds.

By far the larger number of will contests are made upon the ground that the testator was not of sound and disposing mind, but on the contrary was afflicted with insanity. On this subject it may be said, that if there had not been so many expert witnesses the world would never have heard of so many forms of insanity. Expert witnesses on insanity are ever ready to swear on either side of a will contest, as they happen to be first employed, and to frame their theories according to their interests. The Supreme Court of California has announced, time and time again, its own distrust of expert testimony, and has endeavored to be guided by the rules of reason and common sense in its disposition of will cases. The facts must be recognized, that there is no satisfactory definition of insanity, either in or out of the medical profession; that no man can truly mark the dividing line between sanity and insanity; that a person

may be exceedingly eccentric, and yet not be at all insane; that by a "sound mind" is meant only that a person, in order to make a valid will, must be of sufficient understanding to know the character and extent of his property, to know and recollect the natural objects of his bounty, to know to whom he wishes to leave his property, and to appreciate and know the character of his act when he makes his will. If this is the state of his mind, no eccentricity of speech or conduct, and no impairment of mental power, will have any effect to invalidate the solemn act of disposing of his estate by last will and testament.

PART VI.

CORPORATIONS IN CALIFORNIA.

Section 746.—NATURE OF CORPORATIONS.—The definition of corporations given by the law of California is, "A corporation is a creature of the law, having certain powers and duties of a natural person." Unlike a natural person, who may act in business affairs as his individual will may dictate, a corporation can only act through its officers in the manner prescribed by the law creating it. The nature of a corporation is peculiar in another respect. While the rights and privileges of a natural person, considered as such, will terminate by his death, the rights and privileges of the corporation do not end, or vary, upon the death or change of any of the individual members. Judge Kent, the eminent lecturer on law, has said that the object of a corporation is "to enable the members to act by one united will, and to continue their joint powers and property in the same body, undisturbed by the change of members, and without the necessity of perpetual conveyances, as the rights of members pass from one individual to another. All the individuals composing a corporation, and their successors, are considered in law but as one moral person, capable, under an artificial form, of taking and conveying property, contracting debts and duties, and of enjoying a variety of civil and political rights."

Civil Code, Section 283.

Section 747.—FOR WHAT PURPOSE CORPORATIONS MAY BE FORMED.—In California, corporations may be formed for any purpose for which individuals may lawfully associate themselves. And as individuals may

enter into any business transactions not prohibited by law. so a corporation may be formed for the purpose of carrying on any lawful business, of any kind whatever.

Civil Code, Section 286.

Section 748.—WHO MAY FORM A CORPORATION.—The law places but two restrictions upon the formation of corporations, respecting the persons who may organize them. At least three persons must join in the formation of a corporation, or as many more as may be desired; and, whether a corporation be formed by three persons, or a number more than three, a majority of such persons must be residents of the State of California. Foreign corporations may do business in the State, but a corporation cannot be formed here unless a majority of the persons forming it are residents of the State.

Civil Code, Section 285; Statutes of 1905, page 502.

Section 749.—ARTICLES OF INCORPORATION.—The instrument by which a corporation is formed is called "Articles of Incorporation." Articles of Incorporation must be prepared, setting forth: (1) The name of the corporation; (2) the purpose for which it is formed; (3) the place where its principal business is to be transacted; (4) the term for which the corporation is to exist; (5) the number of its Directors; (6) the amount of its capital stock, if any, and the number of shares into which it is divided; (7) the amount actually subscribed, and by whom.

Civil Code, Sections 289, 290.

Section 750.—FORM OF ARTICLES OF INCORPORATION.—The following is a form of Articles of Incorporation, which meets the requirements of the law:—

Articles of Incorporation.

KNOW ALL MEN BY THESE PRESENTS: That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation,

under the laws of the State of California; and we hereby certify,

First—That the name of said corporation is.....

(Here insert the name selected for the corporation.)

Second—That the purposes for which it is formed are to carry on the business of.....

(Here insert the purposes of the corporation.)

Third—That the place where its principal business is to be transacted is the city of.....

(Here insert the name of the place.)

Fourth—That the term for which said corporation is to exist is

(Here insert number of years.)

..... years from and after the date of its incorporation.

Fifth—That the number of Directors of said corporation shall be

(Here insert number of Directors agreed upon.)

..... and that the names and residence of the Directors who are appointed for the first year are:—

Names.

Residence.

(Here insert names and residence of Directors.)

Sixth—That the amount of the capital stock of said corporation shall be.....Dollars, divided into.....thousand shares, of the par value of.....Dollars each.

Seventh—That the amount of said capital stock which has been actually subscribed is.....Dollars, and the following are the names of the persons by whom the same has been subscribed, to-wit:—

Subscriber.	Number of Shares.	Amount.
.....		
(Here insert names of subscribers, number of shares subscribed for, and amount of each subscription.)		
.....		
In witness whereof, we have hereunto set our hands and seals, this.....day of....., 191..		
.....		
.....		
.....		
.....		

STATE OF CALIFORNIA, }
 County of..... } ss.

On this.....day of....., in the year one thousand nine hundred and....., before me,, a Notary Public in and for said county, residing therein, duly commissioned and sworn, personally appeared,, and, personally known to me to be the persons whose names are subscribed to the within instrument, and they each duly acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal, at my office in the County of, State of California, the day and year in this certificate first above written.

.....
 Notary Public in and for the County
 of....., State of California.

Commission expires....., 191..

Section 751.—NUMBER OF SIGNERS.—The Articles of Incorporation must be signed by at least three persons, a majority of whom must be residents of California, and each of whom must make an acknowledgment before a Notary or other officer authorized to take acknowledgments.

If there are more than three Directors, all must sign and acknowledge the Articles of Incorporation.

Civil Code, Section 292; Statutes of 1905, page 502.
Act of the Legislature, approved April 26, 1911.

Section 752.—FILING OF ARTICLES OF INCORPORATION.—The Articles of Incorporation, when prepared and signed and acknowledged, must be filed in the office of the County Clerk of the county in which the principal place of business is located; and a copy, certified by the County Clerk, must be filed in the office of the Secretary of State at Sacramento.

Section 753.—CERTIFICATE OF SECRETARY OF STATE.—Upon receiving and filing in his office the certified copy of the Articles of Incorporation filed with the County Clerk, the Secretary of State issues to the corporation, over the great seal of the State of California, a certificate that a copy of the Articles containing the required statement of facts has been filed in his office; and from the time when this certificate is issued the persons signing the Articles of Incorporation, and their associates and successors, become and are created a corporation, under the name chosen by them.

Civil Code, Section 296.

Section 754.—NAME OF CORPORATION MUST BE NEW.—The name selected by the incorporators must be new; that is, it must not have the same name as any other corporation before organized in this State; nor can the name selected so closely resemble the name of any other existing corporation that it will tend to deceive; and if Articles of Incorporation are sent to the Secretary of State which contain the same name as an existing corporation, or a name so closely resembling it as tends to deceive the public, it will be his duty under the law to refuse to file the Articles or issue his certificate.

Statutes of 1901, page 629.

Section 755.—COST OF INCORPORATING.—The fees for forming a corporation, to be paid the Secretary of State, are as follows: (1) For filing Articles of Incorporation, if the capital stock amounts to twenty-five thousand dollars or less, fifteen dollars; if the capital stock amounts to over twenty-five thousand dollars, and not over seventy-five thousand dollars, twenty-five dollars; if the capital stock amounts to over seventy-five thousand dollars, and not over two hundred thousand dollars, fifty dollars; if the capital stock amounts to over two hundred thousand dollars, and not over five hundred thousand dollars, seventy-five dollars; if the capital stock is over five hundred thousand dollars, and not over one million dollars, one hundred dollars; if the capital stock is over one million dollars, fifty dollars additional for every five hundred thousand dollars or fraction thereof of capital stock over and above one million dollars. (2) For filing Articles of Incorporation without capital stock, except co-operative associations, five dollars. (3) For filing Articles of Incorporation of co-operative associations, fifteen dollars. (4) For recording Articles of Incorporation, twenty cents per folio. (5) For issuing certificate of incorporation, three dollars.

Political Code, Section 409.

Section 756.—LIMIT OF CORPORATE EXISTENCE.—A corporation, being a creature of the law, can only continue for the length of time which the law prescribes. The law of California provides that the limit of time for which a corporation can be formed in this State is fifty years. The Articles of Incorporation may fix a period of existence less than fifty years, but cannot provide for a longer period.

Civil Code, Section 296.

Section 757.—EXTENDING CORPORATE EXISTENCE.—Every corporation formed for a period less than fifty years may, at any time prior to the expiration of the term of its corporate existence, extend such term to a

period not exceeding fifty years from its formation. Such extension may be made at a meeting of the stockholders or members, called by the directors expressly for considering the subject, if voted by stockholders representing two-thirds of the capital stock; or by two-thirds of the members; or may be made upon the written assent of that number of stockholders or members. A certificate of the proceedings of the meeting must be signed by the chairman and the secretary of the meeting and a majority of the directors, and be filed in the office of the County Clerk where the original Articles of Incorporation were filed, and a certified copy must be filed in the office of the Secretary of State, and thereupon the term of the corporation is extended for the specified period.

Section 758.—AMENDMENT OF ARTICLES OF INCORPORATION.—If a corporation is formed, and it should be discovered that some important and material provision respecting the purposes of the corporation was omitted from the Articles of Incorporation, or that the Articles as filed did not contain all the statements of fact required by the law, amended Articles may be filed containing the omitted matters. In order to amend the Articles of Incorporation, however, the amendment must be ordered by a majority vote of the Board of Directors and must be assented to by the stockholders representing two-thirds of the subscribed capital stock, such assent being given either by vote at a meeting or by writing. A copy of the Articles of Incorporation, as amended, must then be filed in the office where the original was filed. The law declares that the time of the existence of a corporation cannot be extended by amendment of its Articles of Incorporation.

Statutes of 1903, page 411.

Section 759.—CHANGE OF NAME.—A corporation may change its name. If a corporation desires to change its name, a petition asking for the change of name may be filed in the Superior Court of the county in which its Articles of Incorporation were originally filed, or in which

its property is situated. A copy of the petition must be published for four weeks. The Court will then hear the petition, and any objections which any person may have to make against the change of name; and if satisfied that the application is made for a good reason, the court may make an order changing the name of the corporation. A certified copy of the decree of the court must be filed in the office of the Secretary of State and in the office of the County Clerk.

Civil Code, Sections 1276, 1277, 1278; Act of the Legislature, in effect May 19, 1907.

Act of the Legislature, approved April 16, 1909.

Section 760.—CHANGE OF PLACE OF BUSINESS.

—A corporation may change its place of business from one place to another in the same county, or from one city or county to another city or county in the State. Before such change can be made, the consent, in writing, of the holders of two-thirds of the capital stock must be obtained and filed in the office of the corporation; then notice of the intended removal must be published, for three weeks, in a newspaper in the county; the Board of Directors must then meet and authorize the change; and a copy of the resolution adopted by the Board, together with an affidavit of the publication of the notice (certified by the President and Secretary, with the corporate seal affixed), must be filed in each office where the original Articles of Incorporation were filed. After these requirements are complied with, a corporation may lawfully change its place of business.

Statutes of 1903, page 254.

Section 761.—REMOVAL FROM ONE LOCATION TO ANOTHER IN SAME CITY.—The law does not require any consent of stockholders, or notice, or publication, where a corporation desires to remove its place of business from one location to another in the same city, town, or village. Such removal may be made by authority alone of a resolution of the Board of Directors.

Section 762.—USE OF WORD "TRUST."—No corporation is allowed to use the word "trust," or "trustee," as a part of its corporate name, unless its Articles of Incorporation authorize it to act as executor, administrator, guardian, assignee, receiver, depository, or trustee. Before the Secretary of State issues to any corporation, authorized in its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository or trustee, there must be filed in his office the affidavit of the persons named in said articles as the first directors of the corporation, that at least one hundred thousand dollars of the capital stock, has actually been subscribed, and paid in to a person named in such affidavit, for the benefit of the corporation.

Act of the Legislature, in effect March 21, 1907.

Section 763.—ANNUAL LICENSE TAX.—The law imposes an annual license tax, to be paid to the Secretary of State, between the first day of July and the first day of September. If not paid on or before the hour of four o'clock P. M., of the first day of September, the tax becomes delinquent, and ten dollars is added thereto, as a penalty for such delinquency. The license tax authorizes the corporation to transact its business during the year, or for any fractional part of the year, in which the license is paid. The year meant by the law is from the first day of July to and including the thirtieth day of June next thereafter. For the failure to pay the tax, the charter of a domestic corporation may be forfeited.

At the time of filing a certified copy of Articles of Incorporation of any corporation when filed on or between the first day of July and the thirtieth day of September, in any year, there shall be paid, in addition to all other fees required by law to be paid to the Secretary of State, the full amount of the license tax provided to be paid in section two of this act; when filed on or between the first day of October and the thirty-first day of December, in any year, a sum equal to three-fourths of the license tax provided for in section two of this act shall be paid; when filed on or between the first day of January and the thirty-first day of March, in any

year, a sum equal to one-half of such license tax provided for in section two of this act shall be paid, and when filed on or between the first day of April and the thirtieth day of June, in any year, a sum equal to one-fourth of such license tax provided for in section two of this act shall be paid. Upon receipt of such full or fractional license tax the Secretary of State shall issue a license receipt for the full or for the fractional part of the then current fiscal year.

The amount of the license tax imposed is as follows: When the authorized capital stock of the corporation does not exceed ten thousand dollars the tax shall be ten dollars; when the authorized capital stock exceeds ten thousand dollars but does not exceed twenty thousand dollars the tax shall be fifteen dollars; when the authorized capital stock exceeds twenty thousand dollars but does not exceed fifty thousand dollars the tax shall be twenty dollars; when the authorized capital stock exceeds fifty thousand dollars but does not exceed one hundred thousand dollars the tax shall be twenty-five dollars; when the authorized capital stock exceeds one hundred thousand dollars but does not exceed two hundred and fifty thousand dollars the tax shall be fifty dollars; when the authorized capital stock exceeds two hundred and fifty thousand dollars but does not exceed five hundred thousand dollars the tax shall be seventy-five dollars; when the authorized capital stock exceeds five hundred thousand dollars but does not exceed two million dollars the tax shall be one hundred dollars; when the authorized capital stock exceeds two million dollars but does not exceed five million dollars the tax shall be two hundred dollars; when the authorized capital stock exceeds five million dollars the tax shall be two hundred and fifty dollars.

Act of the Legislature, approved March 20, 1907.

Section 764.—LICENSE TAX ON FOREIGN CORPORATIONS UNCONSTITUTIONAL. — The requirement of the corporation license tax law that all foreign corporations now or hereafter doing business in this state shall pay an annual license tax based upon their whole capital

stock for the privilege of doing business in this state, and the requirement of section 409 of the Civil Code that such corporation shall pay the same fees for filing a certified copy of their articles as domestic corporations, are unconstitutional and void, as to foreign corporations engaged in an interstate as well as an intra-state business, as being an imposition of a direct burden upon their interstate commerce business in violation of the commerce clause of the constitution of the United States.

Domestic Corporations Engaged in Interstate Business—Invalidity of License Laws.—Such license laws are also invalid as to domestic corporations engaged in an interstate and intra-state business and owning property without the state.

Applicability of License Laws.—Such laws are only applicable to domestic corporations nowhere engaged in interstate business and to foreign corporations seeking to enter the state solely to do domestic business.

License Tax for Intra-state Business—Total Capital Stock as Basis—Unconstitutional Tax.—A license or privilege tax for the conduct of such intra-state business, based upon the total capital stock of such corporation without just relation to the proportion which the capital or the capital stock used in the state bears to the whole capital or capital stock, though in terms declared to be directed solely to intra-state business of such corporation, is unconstitutional and void, as being in violation of the commerce clause of the constitution of the United States by the imposition of an illegal burden upon interstate commerce, and because violative of the fourteenth amendment of the constitution, and its due process of law clause, as an effort to tax the property of the citizens of the United States, which property is situated beyond the jurisdiction of the taxing state and is not amenable to its revenue laws.

(Decided by the Supreme Court of California, in the case of H. K. Mulford Company vs. C. F. Curry, which decision is printed in Volume 44, California Decisions, page 79.)

Section 765.—REVIVAL OF CORPORATION WHICH FAILED TO PAY TAX.—A corporation which has failed to pay the license tax may be reinstated, and relieved from forfeiture, by paying all delinquent license taxes and penalties incurred.

In case the name of any corporation which has suffered forfeiture, or a name so closely resembling the name of such corporation as will tend to deceive, has been adopted by any other corporation since the date of said forfeiture, then said corporation having suffered said forfeiture shall be relieved therefrom only upon the adoption by said corporation seeking revivor of a new name, and in such case nothing in this act contained shall be construed as permitting such corporation to be revived or carry on any business under its former name; and such corporation shall have the right to use its former name or take such new name only upon filing an application therefor with the Secretary of State, and upon the issuing of a certification to such corporation by the Secretary of State setting forth the right of such corporation to take such new name or use its former name as the case may be; provided, however, that the Secretary of State shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this State and which has not suffered forfeiture, or to make or use a name so closely resembling the name of such corporation heretofore organized in this state, as will tend to deceive.

The Statute provides that the Secretary of State shall immediately after the first day of December, 1911, transmit to the County Clerk of each county a list of the delinquent corporations paying up for the purpose of being reinstated. The loose wording of the Statute may leave open for discussion and litigation whether the Legislature intended to allow delinquent corporations to be reinstated after December 1st, 1911.

Act of the Legislature, approved April 24, 1911.

Section 766.—INCOME TAX ON CORPORATIONS.
—A law passed by the Congress of the United States, approved August 5, 1909, creates an income tax on corpora-

tions. The law applies to all corporations, joint stock companies or associations, having a capital stock, and to all insurance companies, whether organized under the laws of any state or territory of the United States, or under the laws of a foreign country, engaged in business in any state or territory of the United States or in Alaska or District of Columbia. The tax must be paid annually to the United States, of one percentum upon the entire net income over and above five thousand dollars received from all sources during each year, exclusive of amounts received as dividends on stock of other corporations. The tax on corporations organized under the laws of any foreign country is upon the amount of net income over and above five thousand dollars received from business transacted and capital invested within the United States and its territories, Alaska and the District of Columbia, during each year, exclusive of amounts received as dividends upon the stock of other corporations. The law applies only to corporations organized and operated for profit, and does not apply to fraternal societies, or to labor, agricultural or horticultural organizations. The net income must be ascertained by deducting from the gross amount all ordinary necessary expenses of maintenance and operation, all losses actually sustained during the year and not made up by insurance (and in case of insurance companies other than dividends paid within the year on policy and annuity contracts and annual additions made to reserve funds); interest paid on bonded or other indebtedness not exceeding the paid up stock of the corporation, and in the case of a bank, banking association or trust company, interest actually paid on deposits; all sums paid within the year for taxes; all amounts received as dividends on stock of other corporations. Each corporation, by its President, Vice-President, or other principal officer, and its Treasurer or Assistant Treasurer, must make a true statement under oath to the Collector of Internal Revenue on or before the 1st day of March of each year, showing the capital stock, indebtedness, gross amount of income for the year, amount of dividends received, expenses paid out, losses sustained, interest paid, and the net income of the corporation after making the

above deductions. The Government may appoint revenue agents to examine any books and papers of any corporation, and to take the testimony of the officers thereof, whenever there is doubt whether a statement made is true and correct. The law provides that if any statement made is false or with fraudulent intent, one hundred per cent must be added to the tax; and in the case of the refusal or neglect to make any statement or to verify the same fifty per cent must be added to the tax. If the officer of the corporation who should make this statement is sick or absent, the Collector may allow further time, not exceeding thirty days. The assessment of the tax must be made, and the corporation notified of the amount due from it, on or before the first day of June of each year, and the tax must be paid on or before the thirtieth day of June. If any tax remains unpaid after the thirtieth day of June in any year, and for ten days after notice and demand by the Collector, there must be added the sum of five per cent on the amount of the tax unpaid, and interest at the rate of one per cent per month from the time the tax becomes due. Every corporation failing to comply with the law requiring a true statement to be made each year, is liable to a penalty of not less than one thousand dollars and not exceeding ten thousand dollars. Any person guilty of making a false or fraudulent statement, with intent to defeat or evade the tax, will be guilty of a misdemeanor and subject to a fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both, at the discretion of the Court, besides the costs of prosecution.

Act of Congress, approved August 5, 1909.

Section 767.—INCOME TAX AFFIRMED.—The Supreme Court of the United States has affirmed the income tax on corporations, declaring that the law is valid and constitutional. The decision of the Court was unanimous. In the opinion of the Court it is said:

“This tax, it is expressly stated, is to be equivalent to 1 per centum of the entire net income over and above \$5,000 received from all sources during the year—this is the meas-

ure of the tax explicitly adopted by the statute. The income is not limited to such as is received from property used in the business, strictly speaking, but is expressly declared to be upon the entire net income above \$5,000 from all sources, excluding the amounts received as dividends on stock in other corporations, joint stock companies, or associations, or insurance companies also subject to the tax. In other words, the tax is imposed upon the doing of business of the character described, and the measure of the tax is to be the income, with the deduction stated, received not only from the property used in business, but from every source. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed and which are not enjoyed by private firms or individuals. These advantages are obvious and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, and not the mere buying and selling nor handling of goods, which may be the same, whether done by corporations or individuals."

Measurement of the tax by the net income of the corporation or the company received by it from all sources was next defended by Justice Day in his opinion as not being so unequal and so arbitrary and baseless as to fall outside of the authority of the taxing power.

In conclusion, the constitutionality and validity of the law is fully sustained and affirmed by the Court.

(Decided by the Supreme Court of the United States, March 13, 1911.)

Section 768.—DUPLICATE OF LOST CERTIFICATE.—Whenever a certificate of stock in a California corporation is lost or destroyed, the owner may bring an action against the corporation, in the Superior Court of the county in which its principal place of business is located, for the purpose of obtaining a new or duplicate certificate.

Statutes of 1905, page 500.

Section 769.—CORPORATIONS TO LOAN MONEY ON CHATTEL MORTGAGES.—A corporation may be organized for the sole purpose of loaning money upon the pledge of goods and chattels. Such corporation must have a capital stock of \$50,000, or over, and all the capital stock must be actually subscribed, and at least 50 per cent actually paid in, before any business is transacted.

Statutes of 1905, page 711.

Section 770.—CAPITAL STOCK.—The law provides that all corporations for profit in California must issue certificates for stock when fully paid up, signed by the President and Secretary, and may provide, in their By-Laws for issuing certificates prior to the full payment, under such restrictions and for such purposes as their By-Laws may provide. The corporation must keep an account of its stock, by whom owned, and the amount of subscriptions unpaid. It may issue its stock and commence business before subscriptions are all paid up, and even before the stock is all subscribed for. The capital stock is the fund upon which the corporation does business, and is the sole basis of its credit. Therefore, no corporation can issue stock, except for money paid, labor done, or property actually received, and all fictitious increase of stock is declared by the law to be void.

Constitution of California, Article 12, Section 11;
Civil Code, Section 323.

Section 771.—AMOUNT OF SUBSCRIBED CAPITAL TO BE PAID IN.—It is only in the case of particular corporations that the law requires a certain amount of the

subscribed capital stock to be paid in when the corporation is formed. As a general rule there is no requirement on the subject. Any certificate issued prior to full payment must show on its face what amount has been paid thereon.

Section 772.—STOCKHOLDERS AND MEMBERS.

Certain corporations are not required to have any capital stock, and a person associated with others in such a corporation is called a member. The holder of shares in a corporation having a capital stock is called a stockholder.

Section 773.—SHARES OF STOCK.—Whenever the capital stock of a corporation is divided into shares, and certificates have been issued, such shares of stock are personal property.

Section 774. —PREFERRED AND COMMON STOCK.—A corporation may issue two classes of stock—preferred stock and common stock. If the two kinds are to be issued, the Articles of Incorporation must provide for the classification, and must contain a statement of the number of shares of preferred stock, and the number of shares to which no preference is given. The Articles of Incorporation must also state, clearly and without evasion, the nature and extent of the preference granted to one class of the stock, and except as so declared there shall be no preference; and there can be no distinction between owners of the two classes of stock as to voting power and liability of stockholders.

Section 775.—BONDED INDEBTEDNESS.—A corporation may create a bonded indebtedness by a vote of the stockholders representing at least two-thirds of the subscribed or issued capital stock, at a meeting called by the Board of Directors, and after giving the same notice required for increase of capital stock; or, a bonded indebtedness may be created by the unanimous vote of the Board of Directors, approved by the written assent of the stockholders holding two-thirds of the subscribed or issued capital stock, in the same manner as is provided for de-

creasing capital stock. The law does not limit the amount to which a bonded indebtedness may go, but merely provides that a corporation may create or increase its bonded indebtedness in the manner stated.

Act of the Legislature, in effect May 18, 1907.

(a)—**Creation of Bonded Indebtedness—Meeting of Stockholders.**—Section 359 of the Civil Code authorizes the creation of a bonded debt by a corporation by the unanimous vote of all the directors and the written consent of the holders of two-thirds of the subscribed or issued stock, without the formality of a meeting of the stockholders called for that purpose upon sixty days' notice.

(b)—**Creation Without Meeting.**—The provision of section 11 of article XII of the constitution forbidding the "increase" of a bonded debt of a corporation without the consent of the holders of a majority of the stock, at a meeting duly called upon sixty days' notice, does not require that such meeting be held or that such notice be given, in order to "create" an original bonded debt.

(c)—**Proposed Debt in Excess of Subscribed Stock—Refusal of Secretary of State to File Certificate Unjustified.**—The secretary of state is not justified in refusing to file the certified copy of the certificate showing the adoption of a resolution to create a bonded debt, on the ground that the subscribed capital stock of the corporation is less than the amount of the proposed debt, as such debt is not "created" at such time. The debt represented by any bond is not "created" until the bond is issued.

(d)—**Subscription of Required Amount at Time of Issuance of Bonds.**—The statute forbidding creation of bonded debts beyond subscribed capital stock is not violated, if a sufficient amount is subscribed as the bonds are sold and delivered.

(Decided by the Supreme Court of California, in the case of *Mannix vs. Superior Court*, which decision is printed in volume 39 of California Decisions, page 467.)

Section 776.—SUBSCRIPTION FOR STOCK.—When a corporation is formed, and a person subscribes for a certain number of shares, by such subscription he becomes the owner of the stock; and it is not essential to create his rights as owner that the certificate should actually be issued to him. The other incorporators or promoters cannot, after a person has become a subscriber for stock, arbitrarily say, "We will not issue the stock to him," and thus avoid the binding force of the subscription; nor can the subscriber himself say, where the parties have acted in good faith, "I have changed my mind; I will not take the stock." By the subscription merely, the subscriber becomes bound to accept and pay for the shares he has subscribed for. And to guard against any imposition upon those who have subscribed for stock, the law provides that a subscription for capital stock cannot be rescinded or canceled, except for fraud or mistake, without the unanimous consent of all the stockholders. What mistakes, or what acts of fraud in the organization of a corporation, would entitle any party to demand that a subscription for stock be canceled, must depend upon the peculiar facts of each case. If a party were induced by false statements or intentional misrepresentations, concerning material matters connected with the proposed corporation, to subscribe for its stock, this would be a fraud upon him for which he could demand that his subscription be canceled. But, whatever the rights of the subscriber might be in the courts, the corporation itself can never cancel a subscription for stock without first having the unanimous consent of all the stockholders. (Decided by the Supreme Court in the case of *Pacific Fruit Company vs. Coon*, which decision is printed in Volume 107 of the *California Reports*, page 447.)

Section 777.—COMPROMISE WITH SUBSCRIBER FOR STOCK.—Where subscribers to the capital stock of a corporation by reason of great financial loss and damage are unable to take and pay for the whole amount of their subscription, the board of directors of the corporation have

authority to compromise the matter by releasing them from their subscription to the extent of one-half of the number of shares subscribed for, in consideration of their acceptance and payment for the remainder. The general rule is, that a subscriber to stock of a corporation cannot be released from the obligation of his contract without the consent of his fellow stockholders and the creditors of the corporation. The reason for the rule is found in the doctrine, which views the subscribed capital stock of a corporation, both paid and unpaid, as a trust fund which the stockholders and creditors have the right to insist shall not be reduced or diminished or impaired except with their consent. In considering the application of the rule, however, it must be kept in mind that the creditor of a corporation is not a direct party to the contractual relation entered into between the corporation and a subscriber to its capital stock, and the creditor's rights do not extend so far as to permit him to interfere and prevent a stockholder from altering his relation toward the corporation with respect to his membership therein as a holder of its shares.

A solvent stockholder may make a valid agreement with the corporation, securing first the consent of all the other stockholders thereto, for his release from his subscription contract. Such an agreement will not prevent existing creditors from having recourse against the retiring stockholder upon his statutory liability. Express authority given by the charter or by-laws of the corporation, is essential, however, to the execution of such an agreement by the board of directors of a corporation.

(a) Insolvent and Irresponsible Subscriber—Power of Board of Directors.—While the power in the stockholders of a corporation to accept a surrender of the shares of a subscriber may not be exercised by the board of directors in the absence of express authority given them by the charter or by-laws, an exception is recognized to the extent that the directors may make compromises with insolvent or irresponsible subscribers. Such compromises usually take the

form, that in consideration of the subscriber paying for a portion of the shares agreed to be taken, he is released, so far as the corporation is concerned, as to liability for the remainder. (Decided by the District Court of Appeals in the case of *Thomas vs. Wentworth Hotel Company*, which decision is printed in Volume 12, California Appellate Decisions, page 834.)

Section 778.—TRANSFER OF SHARES OF STOCK.

—Shares of stock in a corporation are transferred by indorsement and the delivery of the certificate. The indorsement is made by the signature of the owner, his agent, attorney, administrator, or executor. The transfer thus made, by indorsement and delivery, and nothing more, is valid between the parties to it. But to make such a transfer good as to third parties, something more is required; the transfer must be entered upon the books of the corporation, so as to show the names of the parties by whom and to whom transferred, the number of the certificate, the number of shares, and the date of the transfer.

Civil Code, Section 324.

Section 779.—TRANSFER OF STOCK HELD BY NON-RESIDENT.

—The officers of a corporation are not bound to enter on its books any transfer of its shares owned by parties residing out of the State, and are not bound to issue a certificate to the transferee, unless the person claiming under the transfer, or the attorney or agent of the non-resident, makes an affidavit or produces other satisfactory evidence that the non-resident owner was alive at the date of the transfer; and if this affidavit is not made or evidence of such fact produced, the corporation may require an indemnity bond, with two sureties, conditioned to protect the corporation against any liability to the estate of the owner of the shares, in case of his being in fact dead before the transfer; and if neither the affidavit nor other evidence, nor the indemnity bond, is furnished when required, the corpor-

ation and its officers will not be liable for refusing to enter the transfer on the books.

Civil Code, Section 326.

Section 780.—TRANSFER OF STOCK HELD BY MARRIED WOMAN.—Shares of stock in corporations held by or owned by a married woman may be transferred by her, or her agent or attorney, without the signature of her husband, by indorsement and delivery of the stock.

Civil Code, Section 325.

Section 781.—VOID CERTIFICATES.—It is unlawful for any corporation in California to issue stock except for money paid, labor done, or property actually received. Stock cannot be lawfully issued without such consideration, and all certificates issued by any corporation in violation of this provision of the law are void.

Civil Code, Section 359.

Section 782.—REMEDY AGAINST CORPORATION REFUSING TO REGISTER TRANSFER OF STOCK.—If the officers of a corporation refuse to register a transfer of stock on its books, the person to whom the stock has been transferred may lawfully treat such refusal as a conversion of the shares by the corporation. He may then sue the corporation and obtain a judgment for the value of the stock at the time of the refusal to register the transfer, with interest at seven per cent per annum from that time.

Civil Code, Section 3336.

Section 783.—CERTIFICATES OF STOCK ARE NOT NEGOTIABLE.—Certificates of stock in a corporation are not negotiable, in a commercial sense. They are mere evidences of the holder's title to a given share in the property and franchises of the corporation of which he is a member. Consequently, if a corporation issues to an owner of shares of stock a certificate transferable on the

books of the company by indorsement and surrender of the certificate, and he indorses the same and then loses it, and it comes into the hands of a bona fide purchaser for value, such purchaser acquires no right to the stock. (Decided by the Supreme Court in the case of *Sherwood vs. Meadow Valley Mining Company*, which decision is printed in Volume 50 of the California Reports, page 412.) In the case cited, the language of Parsons on Contracts is referred to, where he says: "The result would seem to be that all corporation bonds and government stocks, which pass by delivery, or indorsement with delivery, are negotiable; but that certificates of stock in a corporation are not."

Section 784.—WHEN CORPORATION CANNOT CLAIM ITS OWN STOCK INVALID.—A corporation is precluded from setting up the claim that its own stock is invalid, or not issued according to law, where the rights of a bona fide purchaser are involved. So it has been held that, where a corporation issues capital stock, and represents it as fully paid and causes it to be so listed on the stock and bond exchange, the law will deny it the right to claim that the stock is invalid, as against a bona fide purchaser, even if the stock was in fact issued without consideration. (Decided by the Supreme Court in the case of *Smith vs. Martin*, which decision is printed in Volume 135 of the California Reports, page 247.)

Section 785.—REMEDY AGAINST CORPORATION FOR REFUSING TO RECOGNIZE STOCKHOLDER.—If the corporation refuses to recognize the lawful holder of stock as a stockholder, or refuses to deliver to him a new certificate, or to register him on its books, he has two remedies. He may sue in the Superior Court and compel the corporation to recognize him as a stockholder, by registering him upon its books and delivering to him a new certificate; or, he may sue the corporation for damages, on the ground that by its refusal it has been guilty of a conversion of his stock. These remedies are given not only to the

real owner of the stock, but also to others, as the pledgee, the guardian, or the administrator. (Decided by the Supreme Court in the case of Herbert Kraft Company Bank vs. Bank of Orland, which decision is printed in Volume 133 of the California Reports, page 64.)

Section 786.—MORTGAGE OF SHARES OF STOCK.

—The statute law declares what personal property may be mortgaged in California. Other personal property, however, may be mortgaged, and the mortgage will be good as between the parties to it. Shares of stock in a corporation are personal property. A mortgage of shares of stock may be made, which is valid and binding between the parties, and without delivery of possession of the certificate of stock. Such a mortgage is void as to creditors and subsequent purchasers in good faith for a valuable consideration; but where no such persons are complaining, the mortgage is good between the parties to it.

Section 787.—SEAL OF CORPORATION.—Every corporation must have a seal, but it need not be used upon every occasion. Corporations, like individuals, may appoint agents, and make most of the contracts which fall within their general powers, without the use of a seal.

Section 788.—DEED WITHOUT CORPORATE SEAL.—In a suit involving the validity of the deed of a corporation, executed without the corporate seal by persons signing as Directors, one who claims under such deed must show affirmatively that the deed was authorized by a resolution of the Directors entered on the records of the corporation, or that it was ratified by such resolution. (Decided by the Supreme Court in the case of Barney vs. Pforr, which decision is printed in Volume 117 of the California Reports, page 56.)

Section 789.—WHAT REAL ESTATE MAY BE HELD BY CORPORATION.—A corporation may hold indefinitely any real estate necessary to be used by it in the conduct of its legitimate business; but the Constitution of California provides that no corporation shall hold for a longer period than five years any real estate, except such as may be necessary for carrying on its business. Therefore, if a corporation acquires any real estate, in any manner, which is not necessary in carrying on its business, it must sell such real estate within five years after the title is vested in it; and if it does not do so, the Attorney-General may bring a suit against the corporation, in the name of the people of the State, to compel it to sell the land.

Constitution of California, Article 12, Section 9.

Section 790.—CORPORATION MUST KEEP WITHIN OBJECT OF ITS CREATION.—It is one of the cardinal principles governing the conduct of a corporation that it must keep within the purposes and objects for which it was organized. If organized to carry on a particular business, it cannot engage in another. So, if a corporation formed to do a banking business should engage in insurance, the latter business would be outside of its legitimate object, and its acts in that business would have no validity. So far has this principle been carried in California, our Supreme Court has said that a contract of a corporation, outside of the object of its creation as defined by the law of its organization, and therefore beyond the powers conferred upon it by the Legislature, is not voidable only, but wholly void and of no legal effect. The objection to such a contract is not merely that the corporation ought not to have made it, but that it could not make it.

Section 791.—VOID CONTRACT CANNOT BE RATIFIED.—A contract which is absolutely void, because outside of the objects of the corporation, cannot be ratified. The contract cannot be ratified by either party to it, because it could not have been authorized by either. No performance

on either side can give a void contract any validity, or be the foundation of any right of action upon it. (Decided by the Supreme Court in the case of Chemical National Bank vs. Havermal, which decision is printed in Volume 120 of the California Reports, page 53.)

Section 792.—WHEN CORPORATION BOUND BY ITS OWN INVALID ACT.—While an absolutely void contract cannot be ratified, yet corporations are often bound by their own invalid acts, as where the Directors have done an act without their lawful power, but the corporation has retained the benefits and still enjoys the fruits of the transaction. In such a case, the corporation is not permitted to deny the validity of its own act, although it was irregular or invalid. This rule is illustrated by a decision of the Supreme Court, where a promissory note was irregularly executed by the President and Secretary of a corporation, and upon being sued on the note, the corporation, without returning or offering to return the money received from the lender, denied the validity of the note and attempted to repudiate it. The Supreme Court said: "Assuming that the contract was outside its power, the law does not allow a corporation to retain the benefits which it has received from the contract and escape liability upon it. The invalidity of a contract is subject to the equitable exception that, although a corporation in making a contract acts in disagreement with its charter, where it is a simple question of capacity or authority to contract, arising either on a question of regularity of organization, or of power conferred by the charter, a party who has had the benefit of the agreement cannot be permitted, in an action founded upon it, to question its validity. It would be in the highest degree inequitable and unjust to permit the defendant to repudiate a contract the fruits of which he retains. The exception referred to is founded upon the fact that the contract, though invalid, has been executed in the interests of the corporation, and for its benefit and advantage. Where, therefore, it has received the fruits of such a contract, it cannot refuse payment on the

ground that it had no power to contract. It would be otherwise if the contract had not been executed." (Decided by the Supreme Court in the case of Main vs. Casserly, which decision is printed in Volume 97 of the California Reports, page 127.)

Section 793.—NOTICE TO CORPORATION.—The President is the proper person to whom notice, which is to affect a corporation, is to be given. The corporation has no eyes, ears, or understanding, save through its agents. The President is considered the head of the corporation, and it is his duty to report to the Directors information affecting the interests of the Corporation. Therefore, notice of any matter, given to the President, is notice to the corporation.

Section 794.—LEASE OF FRANCHISE.—Where a corporation secures a franchise, by municipal grant, to operate gas and electric works, and to supply the inhabitants of the city with the product, it cannot lawfully lease its works and privileges to another, and such a lease, when made, is against public policy and void. The reason for this is, a franchise is a personal privilege, and can never be assigned without the consent of the grantor. (Decided by the Supreme Court in the case of Visalia Gas and Electric Light Company vs. Sims, which decision is printed in Volume 104 of the California Reports, page 326.)

Section 795.—MORTGAGE OF CORPORATION PROPERTY.—The President has not the power by virtue of his office to mortgage the property of the corporation. Nor has the Secretary such power by virtue of his office. Nor have both together the power which neither has separately, nor have the stockholders such power. The powers of a corporation must be exercised, and its property controlled, by its Board of Directors, the decision of a majority of the Directors, when lawfully assembled, being valid as a corporate act. A mortgage of the corporation property can only be made by authority of a resolution of the Board of

Directors, adopted by a majority vote, at a meeting lawfully held, and the transaction recorded in its minutes. If there is no resolution of the Board of Directors authorizing it, a mortgage of the corporation's property, though executed by the proper officers, is illegal and invalid.

Section 796. — ASSIGNMENT OF ACCOUNTS.—In the conveyance of real estate, and the encumbrance of corporation property by mortgage, corporations are held to much narrower rules than apply to the transaction of its ordinary business affairs. It is not contemplated that the Board of Directors shall meet upon every occasion when a contract is to be made, or other act done, in the ordinary conduct of the business of the company. Therefore, the President or General Manager of a corporation has power to assign its book accounts for collection, where the assignment is in the ordinary course of its business, and known to and acquiesced in by the Directors, and such a transaction as the officers have been in the habit of doing; and such assignment under such circumstances will be valid without previous authorization by resolution of the Board. The President or General Manager may also have like authority to make assignments of notes held by the corporation, to its creditors, either in payment of or as security for the payment of the debt of the corporation, without express authority of the Board of Directors. (Decided by the Supreme Court in the case of Greig vs. Riordan, which decision is printed in Volume 99 of the California Reports, page 316.)

Section 797. — LIABILITY OF PROMOTERS.—A promoter is one who brings about the incorporation and organization of a corporation; who brings together the persons who become interested in the enterprise, aids in procuring subscriptions, and sets in motion the machinery which results in the formation of the corporation. A promoter occupies a position of confidence towards those whom he induces to enter into the enterprise. And if a promoter

obtains property for the corporation, and transfers the property to the corporation for a sum which he falsely represents to be the cost price, but which is really much more, he will be liable to the stockholders for the profit made by him through his deceit. And in all other matters a promoter must deal fairly and openly with his associates in the formation of a corporation.

Section 798.—WHAT IS A CORPORATION DE FACTO.—It sometimes happens that, in the formation of a corporation, many of the acts required to be performed in order to make a complete organization may have been irregularly performed, or some of them may have been entirely omitted; yet, if the company has proceeded, claiming in good faith to be a corporation under the laws of California, and is doing business as such corporation, a party with whom it transacts business, and who accepts the benefit of its acts, cannot deny the validity of its incorporation. For it is termed a corporation de facto, a company in fact doing the business in good faith for which it was designed, although not organized strictly in accordance with law.

Section 799.—WHO MAY QUESTION THE VALIDITY OF A CORPORATION.—The question of the due incorporation of any company claiming in good faith to be a corporation under the laws of this State, and doing business as such corporation, or of its right to exercise corporate powers, cannot be inquired into, collaterally, in any private suit to which such de facto corporation may be a party. The State alone, through its Attorney-General, has power to bring a suit to test the right of such a corporation to exercise corporate powers.

Section 800.—DENIAL THAT A CORPORATION EXISTS.—It does not follow, because the State alone can question the validity of a corporation or its right to exercise corporate powers, when the company claims in good faith to be a corporation and is doing business as such, that an individual is never permitted to deny the corporate

existence. For it is true that, whenever a corporation brings a suit in the courts of this State, it must allege that it is a corporation, and the defendant may deny the fact, and then the corporation must prove it. And if it should appear that a body of men had met and declared that they constituted themselves a corporation, but neither subscribed to the capital stock, nor adopted Articles of Incorporation, nor appointed the officers, nor performed any act in the organization of the corporation required by law, nor transacted any business as a corporation—in such a case the court would declare, even in a suit between private parties, that there was no incorporation and no right to exercise corporate powers.

Section 801.—STOCKHOLDER'S RIGHT TO INSPECT BOOKS AND RECORDS.—The stockholder is interested in all the affairs and management of the corporation. He is, in one sense, a part owner of the assets, his part being represented by the number of shares owned by him. The law of California, recognizing the necessity for an inspection by the stockholder of the books and records, whenever he desires to do so, has provided that all corporations for profit must keep a record, among other things, of all their business transactions; and that such records shall always be open to the inspection of any Director, member, or stockholder. It is the legal right of the stockholder to inspect, and the duty of the officers to allow him to inspect, at all times, the books and records of the corporation.

Constitution of California, Article 12, Section 14;
Civil Code, Section 377.

Section 802.—MOTIVES OF STOCKHOLDER IN MAKING EXAMINATION OF BOOKS.—The motives of the stockholder in demanding the right to make an examination of the books of the corporation will make no difference. He may not really have any specific interest at stake, rendering his inspection necessary; there may be no beneficial purpose on his part for which the examination is desired; he may wish to enforce a mere naked right, or to gratify

mere idle curiosity; his motives may in fact be improper, and he may be seeking to gain information of a secret nature with the object of furnishing it to a rival company or corporation, to the injury and damage of the corporation whose books he examines; but none of these facts, if they exist, will be a legal excuse for refusing to allow a shareholder, however small his interest, to examine the books and records of the corporation. The shareholder is not required to show any reason or occasion for making the examination, nor can he be met with the defense that his motives are improper. (Decided by the Supreme Court in the case of Johnson vs. Langdon, which decision is printed in Volume 135 of the California Reports, page 624.)

Section 803.—LIABILITY OF STOCKHOLDER FOR FURNISHING INFORMATION TO RIVAL CORPORATION.—When it becomes known to the officers of a corporation that a stockholder has made an examination of the books with an improper motive, and that he has furnished information thus obtained to a rival corporation or company, the corporation he has so injured and damaged is not left by the law without a remedy. The guilty stockholder cannot be enjoined from inspecting the books, nor can the books be lawfully closed to him. But, by thus obtaining and disclosing information, he becomes liable in damages to the corporation, and the corporation can recover a judgment against him for all the damages which are occasioned to it by his conduct. True, he may not be financially able to pay the amount recovered, and the judgment, when obtained, may be worthless; but the law does not take these matters into account; and a suit for damages is the only remedy a corporation has against its own stockholder who examines its books with an improper motive and for the purpose of injuring it.

Section 804.—REMEDY OF STOCKHOLDER WHEN INSPECTION OF BOOKS IS REFUSED.—If a stockholder applies to the proper officer, generally the

secretary, in charge of the books, and demands the right to make an examination, his remedy upon refusal is to apply to the Superior Court of the county for a writ of mandate. The shareholder has a right to be fully informed as to the conditions of the corporation, the manner in which its affairs are conducted, and how the capital to which he has contributed is employed and managed. And if an examination of the books is refused him, upon showing this fact in a petition to the Superior Court, together with the fact that he is a stockholder, the law requires the court to issue a writ commanding the officers of the corporation to open its books, records, and journals to his examination and inspection.

Section 805.—LIABILITY OF STOCKHOLDER FOR CORPORATION DEBTS.—The law of California imposes upon each stockholder the burden of paying the debts of the corporation. Each stockholder is individually and personally liable for such proportion of the debts of the corporation as the amount of stock owned by him bears to the whole of the subscribed capital stock. That is, if a person owns shares of stock to the amount of \$10,000, and the subscribed capital stock is \$100,000, he will be individually and personally liable for the one-tenth part of the debts of the corporation. It will make no difference in his liability whether the subscriptions have been paid in or not; for his proportion is measured, not by the capital actually paid in, but by the capital stock subscribed. If debts or claims are owing by or presented to a corporation, the stockholder is liable only for his proportion of such debts or claims. It will make no difference, either, whether the corporation is a domestic or foreign corporation; the liability of their stockholders in California is the same. The liability of a stockholder is not released by any subsequent transfer of stock, and such transfer will not free him from responsibility on account of a debt incurred by the corporation while he was a stockholder.

Civil Code, Section 322; Statutes of 1905, page 396.

Section 806.—LIABILITY OF MEMBER WHERE THERE IS NO CAPITAL STOCK.—In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities. His liability is to be measured by a comparison of the amount of the debt with the number of members; and, therefore, if the corporation owes \$10,000, and there are ten members, each will be liable for the one-tenth part of the debt, or \$1,000.

Civil Code, Section 322.

Section 807.—PLEDGE OR TRUSTEE NOT LIABLE FOR DEBTS.—A person who holds stock as collateral security does not become, by reason of the pledge, liable for the debts of the corporation; but the pledgor remains liable, as before the pledge. A person holding stock merely as a trustee does not become, in such representative capacity, liable for the debts of the corporation; but the person he represents as trustee is deemed the stockholder, as respects such liability.

Civil Code, Section 322.

Section 808.—WHEN LIABILITY OF STOCKHOLDER BEGINS.—The liability of a stockholder for the debts of the corporation begins when he acquires his stock. He is not liable for the debts of the corporation incurred before he acquired his stock. For instance, to make a stockholder liable to pay his proportion of the amount due on a note made by the corporation, it must appear that the debt for which the note was given was incurred since he became a stockholder. For if a corporation buys goods, before the stockholder acquires his stock, and afterwards makes its note for the amount, that stockholder is not liable on the note, because it was made for a debt incurred prior to the time when he became a stockholder. The stockholder's liability begins with the creation of the original debt, and the debt must be incurred while he is a stockholder, and not before; for otherwise, he is not

liable at all. (Decided by the Supreme Court in the case of *Winona Wagon Company vs. Bull*, which decision is printed in Volume 108 of the California Reports, page 1.)

Section 809.—FRAUDULENT TRANSFER.—The question sometimes arises whether, when a corporation becomes insolvent, and unable to pay its debts as they become due in the ordinary course of business, a stockholder can transfer his shares to another and thus be rid of liability for the debts of the concern. The Supreme Court, in the case of *Welch vs. Sargent*, said on this point: "Generally speaking, the law places no restriction upon the right of a stockholder of a corporation to transfer his stock, so long as the corporation is solvent. But after the corporation has become insolvent, and the stockholder knows this, a shareholder cannot transfer his stock to irresponsible parties so as to relieve himself from liability to the creditors." It matters not what his intention was, for he may have transferred the stock in good faith, yet the law will still protect the creditors of an insolvent corporation by holding such a transfer void as to them. (Decided by the Supreme Court in the case of *Welch vs. Sargent*, which decision is printed in Volume 127 of the California Reports, page 72.)

Section 810.—STOCKHOLDER MAY SUE OTHER STOCKHOLDERS.—A stockholder may sue other stockholders in the same corporation for their pro rata of a debt due him by the corporation. (Decided by the Supreme Court in the case of *Brown vs. Merrill*, which decision is printed in Volume 107 of the California Reports, page 446.)

Section 811.—ASSIGNEE OF CREDITOR MAY SUE STOCKHOLDERS.—The creditor of a corporation may assign his account for collection, and the assignee will have the right to sue the stockholders in his own name. It is no defense, in a suit against stockholders, that the assignee, instead of the original creditor, brings the suit to collect the amount of the debt.

Section 812.—CREDITOR'S RIGHT TO UNPAID SUBSCRIPTIONS.—Debts due to a corporation constitute a portion of its assets, and may be reached by creditors. Among these are unpaid subscriptions to stock. As to creditors, the corporation is presumed to have sought credit based on its supposed capital, actually paid in or due from its stockholders. As the supposed capital is the sole basis of credit, the stockholders, who are the real parties carrying on the business, must make the representation as to its capital good; and a corporation cannot release the obligations of stockholders to pay up its unpaid subscriptions, and thus evade the payment of creditors. And the creditors may bring a suit to collect the unpaid balance due on stock of a corporation which has become insolvent.

Section 813.— WITHIN WHAT TIME SUIT AGAINST STOCKHOLDER MUST BE COMMENCED.—A suit against a stockholder by a creditor of a corporation must be commenced within three years after the cause of action accrues. If a corporation owes a debt, and the creditor wishes to sue a stockholder for his proportion of the amount due, he must sue within three years after the debt was created, or the liability of the stockholder will be barred. And in this connection it has been decided that the liability of the stockholder cannot be renewed or extended by any renewal or extension of the indebtedness which the creditor may make with the corporation. (Decided by the Supreme Court in the case of Hyman vs. Coleman, which decision is printed in Volume 82 of the California Reports, page 650.) The liability of the stockholder is created and exists by statute. The liability arises when a debt is contracted by the corporation. The liability is limited to three years from the time it arises, and the corporation has no power to extend that limitation without direct authority from the stockholders. Therefore, if a debt is owing to a corporation, and the corporation afterwards takes a note from the debtor, the liability of the stockholder does not begin when the note is given, but dates back to

the time when the debt was created. (Decided by the Supreme Court in the case of Hunt vs. Ward, which decision is printed in Volume 99 of the California Reports, page 612.)

Code of Civil Procedure, Section 359.

Section 814.—WHEN LIABILITY OF STOCKHOLDER IS SATISFIED.—Each stockholder has a several liability, and that liability is proportionate to the amount of his stock; and when he has paid his portion of any debt, or of all the debts of the corporation, he is freed from all liability on that account.

Section 815.—LIABILITY OF STOCKHOLDERS IN DISTILLERY FOR FEDERAL TAXES.—Every stockholder in a corporation possessing a still, distillery, or distilling apparatus, is individually and personally liable to the United States for the taxes imposed on the liquors distilled. His individual property, although in no way connected with the business of such corporation, may be seized and distrained for Federal taxes due on spirits produced by it. (Decided by the Supreme Court in the case of Richter vs. Blasingame, which decision is printed in Volume 110 of the California Reports, page 530.)

Section 816.—HOLDING PROPERTY IN OTHER COUNTIES.—A corporation acquiring or holding property in a county other than its principal place of business must file in the office of the County Clerk of such county a certified copy of its Articles of Incorporation. The copy must be certified by the Secretary of State.

Civil Code, Section 299.

Section 817.—WITHIN WHAT TIME CORPORATION MUST COMMENCE BUSINESS.—A corporation must organize, by the election of a Board of Directors, and must commence business, within one year from the date of its certificate of incorporation. If it does not do so, or, if organized for the construction of any particular works, it

fails to commence the construction of its works within one year, any creditor may complain to the Attorney-General, who will begin a suit in the name of the State and have the Court declare the corporate existence forfeited and at an end.

Statutes of 1901, page 632.

Section 818.—LIABILITY OF PURCHASER OF SUBSCRIPTION STOCK.—A purchaser of stock of a corporation, in good faith and for a valuable consideration, from an original subscriber, who has not paid the full subscription price thereof, is liable for the unpaid subscription, where such non-payment appears from the books of the corporation, notwithstanding that he has no actual notice or knowledge of the same and it is represented to him by the president of the corporation and other sellers of stock that the same was fully paid for and it so appears on the face of the certificates. Such representation made by the president of a corporation are not binding upon it, without proof of express authority to make them, nor is the right of the corporation to require full payment of the subscription price affected by such representations made by the other original subscribers.

When the transferees of subscription stock cause the transfer to be recorded on the books of the corporation, they become liable for the unpaid subscription price thereof, and no express promise on their part to assume or pay the same is necessary.

In this State certificates of stock are not negotiable instruments, but mere evidence of the holder's right to a given share in the franchise and property of the corporation, and a purchaser takes them subject to all equities in favor of the corporation.

Unpaid subscriptions for stock are assets in bankruptcy, in the event of the insolvency of the corporation, and recoverable by the trustees.

The amount due from stockholders for subscribed stock is a trust fund for the creditors of the corporation, and such

unpaid subscriptions are a part of its assets, and may be collected by its creditors.

(Decided by the Supreme Court of California, in the case of Perkins vs. Cowles, which decision is printed in Volume XXXIX of California Decisions, page 397.)

Section 819.—FAILURE TO ELECT OFFICERS.—If a corporation does organize within one year, but neglects and fails, for two years thereafter, to elect a President, Secretary, Cashier, or any necessary officers, and to transact in regular order the business for which it was incorporated, its corporate powers cease and it will be dissolved.

Statutes of 1901, page 632.

Section 820.—INCREASE OF CAPITAL STOCK.—A corporation may increase its capital stock, at any time, and the law provides what must be done when an increase of stock is desired. To increase the capital stock, a meeting of the stockholders must be called for that purpose by a resolution of the Directors. A notice must be published in a newspaper, once a week, for at least sixty days, stating that the object of the meeting is to vote on the question of increasing the capital stock; the amount to which it is proposed to increase the capital; and the time and place of holding the meeting. The meeting must be held at the principal place of business of the corporation and in the building where the Directors usually meet. In addition to the notice by publication, the Secretary must also address a copy of the notice to each of the stockholders whose names appear on the company's books, at his place of residence, if known; and if the residence of the stockholder is not known, the notice must be addressed to him at the place where the company has its principal place of business; and the notice must be mailed to each stockholder at least thirty days before the day appointed for the meeting. When the meeting takes place, two-thirds of the subscribed or issued stock must be voted in favor of the proposition to increase the capital stock, in order to carry it.

Statutes of 1903, page 347.

Section 821.—DECREASE OF CAPITAL STOCK.—

The capital stock of a corporation may be decreased in either one of two ways. It may be decreased by a vote of the stockholders, at a meeting for the purpose, held in the same manner and after similar notice as a meeting for increase of stock. The notice must state the amount of the decrease proposed, and the proposed decrease must be carried by a vote representing at least two-thirds of the subscribed or issued capital stock. The law provides a second mode of decreasing the capital stock. A corporation may diminish its capital stock by the unanimous vote of its Board of Directors, at a regular meeting, or at a special meeting called for that purpose, and approved by the written assent of stockholders holding two-thirds of the subscribed or issued capital stock. The written assent of the stockholders must be filed with the Secretary. The Secretary, as soon as the resolution of the Directors is passed providing for the decrease, must send a copy of the resolution to each stockholder whose name appears on the company's books; he must send by mail, postage prepaid, addressed to the known place of residence of the stockholder, or to the principal place of business of the corporation, if the residence of the stockholder is not known; and the copy of the resolution must be mailed to each stockholder at least thirty days before the certificate mentioned in the following section is made and filed. Within the thirty days any stockholder may file with the Secretary his dissent in writing. The capital stock cannot be decreased to an amount less than the indebtedness of the corporation.

Statutes of 1903, page 348.

Section 822.—CERTIFICATE OF INCREASE OR DECREASE OF CAPITAL STOCK.—

If capital stock is increased or decreased by a vote of the stockholders, a certificate, signed and verified by the President and Secretary and a majority of the Directors, and with the corporate seal attached, must be filed in the office of the County Clerk, and a certified copy must be filed in the office of the Secretary of State. The certificate must show that all the requirements

of the law have been complied with; also, the amount to which the capital stock has been increased or diminished; the amount of stock represented at the meeting, and the total vote in the affirmative, and the total vote in the negative; and the total number of subscribed or issued shares of capital stock of the corporation. If the stock is decreased by a vote of the Directors, a similar certificate must be filed, which must show, also, the total amount of stock represented by the written assents and the written dissents filed with the Secretary.

Statutes of 1903, page 349.

Section 823.—PAPER IN WHICH NOTICES MUST BE PUBLISHED.—When the by-laws of a corporation prescribe the paper in which notices of meetings of Directors or stockholders are to be published, such notices must be published in that paper. If the by-laws do not prescribe any particular paper, the Directors may select the paper in which the notices may be published.

Section 824.—ASSESSMENT OF STOCK.—The Directors of any corporation in California, after one-fourth of its capital stock has been subscribed, may, for the purpose of paying expenses, conducting business, or paying debts, levy and collect assessments upon the subscribed capital stock,

Civil Code, Section 331.

Section 825.—AMOUNT OF ASSESSMENT.—The law provides generally that no one assessment must exceed ten per cent of the capital stock named in the Articles of Incorporation. To this general provision there are three exceptions, viz: (1) If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient, then it may be for such a percentage as will raise that amount; (2) The Directors of railroad corporations may assess the capital stock in

installments of not more than ten per cent per month, unless their Articles of Incorporation provide otherwise; and (3) the Directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper.

Civil Code, Section 332.

Section 826.—ORDER LEVYING ASSESSMENT.—

The assessment must be levied by an order of the Board of Directors. Every order levying an assessment must specify the amount thereof, to whom, and where payable; fix a day, subsequent to the full term of publication of the assessment notice, on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent.

Civil Code, Section 334.

Section 827.—LEVY OF ASSESSMENT.—The right to levy an assessment upon the capital stock of a corporation can only be legally exercised in the manner provided by law or by the charter of the corporation.

(a) Levy Must Be Made at Regular or Specially Called Meeting.—An assessment upon the capital stock of a corporation can be levied only at a regular meeting or at a special meeting regularly called.

(b) Adjournment of Time of Holding Regular Meeting by Minority of Directors to Future Day Not a Regular Meeting—Assessment Levied at Such Meeting Void.—An assessment levied by a majority of a board of directors of a corporation in the absence and without the knowledge of the minority of the board, at a time to which the regular monthly meeting of the board had been adjourned by a minority of the board present on the day of the regular meeting, on account of the absence of a quorum, is void, as

such meeting is neither a regular meeting nor a specially called meeting.

(c) **Directors' Meetings—Adjournment by Minority Unauthorized.**—There is no provision of the Code authorizing a meeting of the directors of a corporation to be adjourned by a minority, and such act is invalid under the express provision of Section 305 of the Civil Code.

(Decided by the California District Court of Appeals, in the case of *Raisch vs. M. K. & T. Oil Co.*, which decision is printed in *California Appellate Decisions*, Volume 6, No. 284, page 403.)

Section 828.—NOTICE OF ASSESSMENT.—A notice of the assessment must be published by the Secretary, once a week for four successive weeks, in a newspaper published at the principal place of business, if there be one, or, if there is none, then the notice must be published in some other newspaper in the county. If the principal place of business is in one county, and the works of the company in another, the notice must be published in both counties for the same length of time. Also, the notice must either be personally served upon each stockholder, or sent through the mail addressed to him. If the stockholder's address is known, the notice must be mailed there; but if the address is not known, it is sufficient to mail the notice to him at the principal place of business of the corporation.

Civil Code, Section 336.

Section 829.—FORM OF NOTICE OF ASSESSMENT.—The notice of assessment, mentioned in the preceding section, must be substantially in the following form:

NOTICE OF ASSESSMENT.

WILLITS STATE BANK.—Location of principal place of business, Willits, Mendocino County, State of California. Notice is hereby given, that at a meeting of the Directors, held on the.....day of....., 191.., an assessment of.....per share was

levied upon the capital stock of the corporation, payable on the.....day of....., 191., to the Secretary of said Willits State Bank, at his office in said bank in Willits, Mendocino County, State of California. Any stock upon which this assessment shall remain unpaid on theday of....., 191., will be delinquent and advertised for sale at public auction, and, unless payment is made before, will be sold on the.....day of , 19...., to pay the delinquent assessment, together with costs of advertising and expenses of sale.

.....,

Secretary.

Office at Willits State Bank, Main Street,
Willits, California.

Section 830.—HOW ASSESSMENT MAY BE ENFORCED.—The law provides two methods for the enforcement of the liabilities of stockholders to the corporation, by reason of assessment levied upon the capital stock—one by a sale of the stock, for the delinquent assessment; the other by a suit against the stockholder to recover from him the amount of the assessment. The Board of Directors has the option to adopt one or the other method of enforcing the payment of an assessment on stock lawfully levied.

Civil Code, Section 349.

Section 831.—NOTICE OF SALE.—If any portion of the assessment remains unpaid, on the day named in the notice for declaring the stock delinquent, the Secretary must, if the Directors elect to have the stock sold, publish a notice of sale in the same paper in which the delinquent notice was published. The notice, when published in a daily paper, must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale. The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been

issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

Civil Code, Sections 338, 339.

Section 832.—FORM OF NOTICE OF SALE.—The following is a form of the notice of sale mentioned in the preceding section:

NOTICE OF SALE OF STOCK FOR DELINQUENT ASSESSMENT.

WILLITS STATE BANK.—Location of principal place of business, Willits, Mendocino County, State of California. Notice is hereby given, that there is delinquent upon the following described stock of the corporation, on account of assessment levied on the.....day of..... 191.., the several amounts set opposite the names of the respective shareholders, as follows: (Here insert names, number of certificate, number of shares, and amount.) And in accordance with law, and an order of the Board of Directors made on the.....day of....., 191.., so many shares of each parcel of such stock as may be necessary will be sold, at public auction, at the office of the Secretary of said corporation, at the Willits State Bank, Main Street, Willits, Mendocino County, State of California, on the.....day of....., 191.., at 10 o'clock A. M. of that day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

.....,

Secretary.

Office at Willits State Bank, Main Street, Willits, Mendocino County, State of California.

Section 833.—WHO ARE LIABLE ON ASSESSMENTS.—For the purpose of ascertaining those who are liable to it for the amount of an assessment, a corporation can only look to the list of stockholders as their names are registered upon its books. Where an assignment of stock is made after the levy of an assessment, but no formal transfer is made on the books of the company, the assignor

is still liable on the assessment. Where stock has been assigned, and a transfer of the stock has been duly made on the books of the company, the assignee becomes liable on assessments.

Section 834.—EXTENSION OF TIME FOR PAYMENT AND SALE.—The dates fixed in any notice of assessment or notice of delinquent sale may be extended from time to time for not more than thirty days, by order of the Directors, entered on the records of the corporation; but no order extending the time for the performance of any acts specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates.

Civil Code, Section 345.

Section 835.—SALE OF STOCK FOR ASSESSMENT.—By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or cost of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale. On the day, at the place, and at the time appointed in the notice of sale, the Secretary must, unless otherwise ordered by the Directors, sell or cause to be sold at public auction, to the highest bidder for cash, so many shares of each parcel of the described stock as may be necessary to pay the assessments and charges thereon, according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessments. The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation, on payment of the assessment and costs.

Civil Code, Sections 340, 341, 342.

Section 836.—PURCHASE OF DELINQUENT STOCK BY THE CORPORATION.—If, at the sale of stock, no bidder offers the amount of the assessments and charges due, the same may be bid in and purchased by the corporation, through the Secretary, President, or any Director, at the amount of the assessments, costs, and charges due; and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock of the corporation must be made on the books. While the stock remains the property of the corporation, it is not assessable, nor must any dividends be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation. All purchases of its own stock made by any corporation vest the legal title to the stock in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or the vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock, for all purposes of election, or voting on any question at a stockholders' meeting.

Civil Code, Sections 343, 344.

Section 837.—SUIT TO RECOVER AMOUNT OF ASSESSMENT.—On the day specified for declaring the stock delinquent, or at any subsequent time before the sale of the delinquent stock, the Board of Directors may order all such proceedings stopped, and may elect to sue the delinquent stockholders for their assessments. The stockholder is liable in the suit for the amount of the assessment, and for the costs and expenses incurred by the corporation in trying to collect it.

Civil Code, Section 349.

Section 838.—LIEN FOR ASSESSMENT.—After an assessment has been made, a corporation has a lien for the payment of the assessment, which is not affected by the issuance of a new certificate and a transfer of the shares. The lien is upon the shares, and not upon the certificate. When an old certificate is surrendered, and a new certificate is issued, the new certificate represents the same shares; but the shares themselves remain subject to any lien the corporation may have upon them, and the new owner takes subject to such lien. The identity of the stock is not affected by the transfer. The keeping of a stock book, in which the original issue and all subsequent transfers must be entered, enables the holder or purchaser to trace his shares back to the original issue by the numbers of the different certificates, and thus identify the shares upon which any assessment has been made, and enables him to ascertain with certainty, in connection with the other records of the corporation relating to assessments and delinquent sales, whether his shares are free from liens or liability in favor of the corporation; and in the same manner enables the corporation to enforce its delinquent assessment upon the shares liable therefor, no matter how many transfers have been made subsequent to the assessment; each transferee taking the legal title, but subject to the assessment, just as the grantee of the legal title to land takes it subject to all valid recorded liens. (Decided by the Supreme Court in the case of *Craig vs. Hesperia Land and Water Company*, which decision is printed in Volume 113 of the *California Reports*, page 7.)

Section 839.—BY-LAWS OF CORPORATION.—Every corporation formed under the laws of California must, within one month after filing Articles of Incorporation, adopt By-Laws for the government of the corporation. The By-Laws adopted must not be inconsistent with the Constitution and laws of the State.

Section 840.—HOW BY-LAWS ADOPTED.—The assent of stockholders, representing a majority of all the subscribed capital stock, or a majority of the members, if there be no capital stock, is necessary to adopt By-Laws, if they are adopted at a meeting called for that purpose. By-Laws may also be adopted, without a meeting for that purpose, by the written assent of the holders of two-thirds of the stock, or by the written assent of two-thirds of the members, if there is no capital stock. If a meeting of stockholders is called for the purpose of adopting By-Laws, notice must be given by publication in a newspaper for two weeks, by order of the acting President.

Civil Code, Section 301.

Section 841.—WHAT BY-LAWS MAY PROVIDE FOR.—A corporation may, by its By-Laws, provide for the following things: (1) The time, place, and manner of calling and conducting its meetings, and may dispense with notice of all regular meetings of the stockholders or Directors; (2) The number of stockholders or members constituting a quorum; (3) The mode of voting by proxy; (4) The qualifications and duties of Directors, the time of their annual election, and the mode and manner of giving notice of such election; (5) The compensation and duties of officers; (6) The manner of election and the term of office of all officers other than the Directors; (7) Suitable penalties may be provided for the violation of the By-Laws, not exceeding \$100 for any one offense; (8) The amount of stock to be owned by a Director; (9) For the filling of vacancies on the Board of Directors; (10) For the issuing of certificates of stock before full payment therefor; (11) For the disposal of stock owned by the corporation; and, (12) The By-Laws may specify the newspaper in which all notices of the meetings of stockholders or Directors, when notice is necessary, shall be published.

Civil Code, Sections 301, 305, 308, 323, 344.

Section 842.—BOOK OF BY-LAWS.—The law provides that all By-Laws adopted must be certified by a majority of the Directors and Secretary of the corporation, and copied in a legible hand, in a book kept in the office of the corporation, to be known as the "Book of By-Laws," and no By-Law shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays.

Civil Code, Section 304.

Section 843.—AMENDMENT OF BY-LAWS.—The By-Laws can be amended by a vote of the stockholders at the annual meeting, or at a special meeting called for that purpose. There must be a vote representing two-thirds of the subscribed stock. The By-Laws may also be amended, without a meeting, by the written assent of the holders of two-thirds of the stock, or two-thirds of the members if there is no capital stock.

Civil Code, Section 304; Statutes of 1905, page 557.

Section 844.—REPEALING OLD AND ADOPTING NEW BY-LAWS.—Old By-Laws may be repealed absolutely, and new By-Laws adopted in their place, in the same manner as amendments are made, stated in Section 843.

Section 845.—RECORD OF AMENDMENTS.—The law provides that, "whenever any amendment or new By-Law is adopted, it shall be copied in the Book of By-Laws with the original By-Laws, and immediately after them, and shall not take effect until so copied. If any By-Law be repealed, the fact of repeal, with the date of the meeting at which the repeal was enacted, or written assent was filed, shall be stated in said book, and until so stated the repeal shall not take effect."

Civil Code, Section 304.

Section 846.—THE BOARD OF DIRECTORS.—The corporate powers, business, and property of corporations must be exercised, conducted, and controlled by a Board of Directors.

Section 847.—NUMBER OF DIRECTORS.—The law is, that the number of Directors cannot be less than three, but may be any number more than three. The number of Directors may be increased to more than three without limit, to as many as may be desired at any time after articles of incorporation have been filed, by a vote of the majority of the stockholders of the corporation; and if the corporation has been formed with more than three Directors, a majority of the stockholders may vote to decrease the directors to any number not less than three. The increase or decrease of the number of Directors must be at a meeting of the stockholders called for that purpose. When the number of Directors has been increased or decreased, a certificate stating that fact must be filed in the same manner as articles of incorporation were filed.

Act of the Legislature, in effect May 18, 1907.

Section 848.—QUALIFICATION OF DIRECTORS.—A majority of the Directors must be citizens of California. Directors of corporations for profit must be holders of its stock to an amount fixed by the By-Laws of the corporation; Directors of all other corporations must be members thereof.

Statutes of 1901, page 308.

Section 849.—DIRECTORS FOR THE FIRST YEAR.—The Directors to serve for the first year, or until the time fixed for the election of Directors, are designated in the Articles of Incorporation; and the persons named in the Articles of Incorporation, upon the organization of a corporation, will serve until their successors are regularly elected.

Section 850.—ELECTION OF DIRECTORS.—The Directors of a corporation must be elected annually by the stockholders or members, and if no provision is made in the By-Laws for the time of election, the election must be held on the first Tuesday in June. There must be a majority of the subscribed capital stock, or of the members where there is no capital stock represented at the meeting for the election of Directors, either in person or by proxy in writing. The election must be by ballot, and every stockholder has the right to vote in person or by proxy the number of shares standing in his name, for as many persons as there are Directors to be elected, or he may cumulate his shares and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal; or the stockholder may distribute his shares on the same principle among as many candidates as he shall think fit. These provisions of the law apply to all corporations doing business in this State, domestic or foreign. The Director receiving the highest number of votes shall be declared elected. In corporations having no capital stock, each member of the corporation may cast as many votes for one Director as there are Directors to be elected, or he may distribute them among any or all the candidates.

Civil Code, Sections 302, 312; Statutes of 1903, page 253.

Section 851.—NOTICE OF MEETINGS.—Notice of meetings of the stockholders to elect Directors must be given, by the Secretary, unless all of the stockholders waive such notice in writing. When all the stockholders or members of a corporation are present at any meeting, however called or notified, and sign a written consent thereto on the records of such meeting, or if those not present sign in writing a waiver of notice of such meeting, which waiver is presented and made a part of the records of such meeting, the doings

of such meeting are as valid as if had at a meeting legally called and noticed.

Act of the Legislature, approved February 22, 1909.

Section 852.—WHO MAY VOTE AT ELECTION OF DIRECTORS.—To entitle a person to vote at the election of Directors, he must be a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days before the election. It is made a requisite of the right to vote that the voter shall not only be registered as a stockholder, but that he shall have been so registered for at least ten days prior to the election, and that he shall also be a bona fide stockholder at the time of the election. The voter must be either the owner of the stock, or have some other interest in it, in order to be a bona fide stockholder. Therefore, one in whose name stock has been registered upon the books of the corporation, but who has never had any interest in the stock, and is only a dummy for the real owner, and when the change on the books was made for the purpose of enabling the real owner to avoid his liabilities, is not a bona fide stockholder, within the meaning of the law, and should not be allowed to vote at an election of Directors. (Decided by the Supreme Court in the case of *Smith vs. S. F. and N. P. Railway Company*, which decision is printed in Volume 115 of the California Reports, page 584.)

Civil Code, Sections 307, 312.

Section 853.—WHO MAY VOTE STOCK IN HANDS OF PLEDGEE OR TRUSTEE.—All shares of stocks standing on the books of a corporation in the name of any person as pledgee or trustee, may be represented or voted by such pledgee or trustee, but only in case the pledgor or beneficial owner fails to represent and vote the same. It may be agreed, however, that the stock shall be voted in a different manner.

Act of the Legislature, approved March 9, 1911.

Section 854.—WHO MAY VOTE STOCK IN HANDS OF ADMINISTRATOR OR EXECUTOR.—When the owner or pledgee is dead, he must be succeeded by his personal representative, that is, by his executor or administrator. In such case, the administrator or executor will have the right to have the stock transferred on the books of the corporation to him, and will be entitled to vote the stock. In the case of a Trustee who dies, the law will not allow the trust to die with him, but will proceed to appoint another Trustee to succeed him, and in this case the succeeding Trustee will be entitled to have the stock transferred to him, and may vote it.

Section 855.—WHO MAY VOTE STOCK BELONGING TO MINOR.—The guardian of a minor, the owner of stock in a corporation, is entitled to vote it.

Section 856.—WHO MAY VOTE STOCK BELONGING TO INSANE PERSON.—The guardian of the estate of an insane person, the owner of stock in a corporation, is entitled to vote it.

Section 857.—VOTING BY PROXY.—A stockholder may be represented at all elections by proxy. He may select any one he pleases as his proxy, to vote his stock, and the person selected by him need not himself be a stockholder. A corporation has no power to restrict the right of voting by proxy to certain persons, or to control their selection by the stockholder in any way, or to curtail in any other respect the right to vote by proxy. There was for a long time in California a custom among banking corporations to have a By-Law providing that no person not a stockholder would be allowed to vote as a proxy, but the Supreme Court has declared such a By-Law invalid, upon the ground that a corporation has no power to make or enforce it. The law places no restriction whatever upon the stockholder as to the person he shall be at liberty to select to act under his proxy; and a corporation has no

power to either qualify or limit the right to vote by proxy. (Decided by the Supreme Court in the case of People's Home Savings Bank vs. Superior Court, which decision is printed in Volume 104 of California Reports, page 649.) A new section has been added to the Civil Code (in force April 27, 1905), regulating the giving and use of proxies. The law provides that every proxy must be executed in writing by the stockholder himself, or by his duly authorized attorney. No proxy given or made prior to February 27, 1905, will be valid after the expiration of eleven months from said date, unless the length of time for which it is to continue is specified in the proxy itself; and the time, when specified, must be for some limited period, in no case to exceed seven years from the date of the proxy. A proxy hereafter given is valid for eleven months after its date, unless the time, not exceeding seven years, is specified in it. Every proxy is revocable at the pleasure of the person executing it. (Act of the Legislature, approved February 27, 1905.)

Civil Code, Section 312; Statutes of 1905, page 22.

Section 858.—ORGANIZATION OF BOARD OF DIRECTORS.—Immediately after their election, the Directors must organize by the election of a President, a Secretary, and a Treasurer.

Civil Code, Section 308.

Section 859.—DUTIES OF PRESIDENT, SECRETARY, AND TREASURER.—The duties of the President, the Secretary, and the Treasurer may be prescribed by the corporation in its By-Laws. They may be required to perform any duty consistent with the objects of the corporation and not inconsistent with the laws of the State.

Section 860.—OTHER OFFICERS.—A corporation may appoint other officers than those named by the law, and prescribe what their duties shall be. Such officers may be provided for in the By-Laws, and appointed by the Board of Directors.

Section 861.—QUORUM OF DIRECTORS.—A majority of the Board of Directors constitutes a quorum for the transaction of business. Unless a quorum is present and acting, no business performed, or act done, is valid, as against the corporation. No legal quorum of a Board of Directors is present when action is attempted to be taken on a matter as to which one of the Directors necessary to make the quorum is interested; and resolutions passed at such a meeting cannot be ratified by the stockholders.

Civil Code, Section 305.

Section 862.—VOTE OF DIRECTOR ON MATTER IN WHICH HE IS INTERESTED.—A Director of a corporation cannot legally vote or act upon any matter in which he is financially interested adversely to the corporation. By virtue of his position, he is disqualified from voting or in any mode acting in his official capacity as a Director, for the purpose of creating an obligation in his own favor. So strictly is this principle adhered to by the courts, that no question is allowed to be raised as to the fairness or unfairness of the contract so entered into. A Director must not participate in any act in which his personal interest is antagonistic to that of the corporation. Being interested in the subject-matter, the law does not allow him, as a Director, to deal with himself, and thus be subjected to the temptation to advance his own interests. The Supreme Court of California had under consideration a case where a Director named Wells formed a part of a quorum, at a meeting of the Board, which voted the execution of a mortgage on the property of the corporation to him; and the Court held that the mortgage was invalid, saying: "The same rules which preclude an interested Director from uniting with other Directors in the creation of an obligation in favor of himself by his vote, forbid him from uniting with them in creating such obligation by any act or exercise of his official position; and a meeting at which there is not a majority of the Directors, exclusive of such interested Director, is not a

competent Board for the transaction of any corporate business. By reason of the disqualification of Wells from taking any part in passing the resolution for executing the note and mortgage to himself, he could neither vote in favor of the resolution, nor by his presence help to create a quorum by which the other two Directors could adopt it. For the purpose of any action upon this resolution, he was as much a stranger to the Board as if he had never been elected a Director; and, although he may have been physically present in the room with the other two Directors, he was not for that purpose a competent part of the Board, any more than would have been any other bystander, and there was not, therefore, a quorum of the Board 'present and acting' at the time the resolution was adopted." (Decided by the Supreme Court in the case of Curtin vs. Salmon River Hydraulic Gold Mining Company, which decision is printed in Volume 130 of the California Reports, page 345.)

Section 863.—REGULAR AND SPECIAL MEETINGS.—The time of holding the meetings of the Board of Directors may be fixed in the By-Laws, and the By-Laws may provide that no notice be given of regular meetings. Where a special meeting is called, for any purpose, all of the Directors must be notified by the Secretary in the proper manner. If the meeting is special, and the Directors are not all notified, the meeting is not duly assembled, and its action does not bind the corporation as a valid corporate act.

Section 864.—PUBLICITY CANNOT MAKE ILLEGAL ACT OF DIRECTORS VALID.—The publicity alone of an illegal and unauthorized act of the Directors of a corporation does not make it valid; and Directors charged with doing an illegal act cannot defend it by saying that their act was open, and not secret.

Section 865.—VACANCY IN BOARD OF DIRECTORS.—The By-Laws of a corporation may provide the manner in which a vacancy in the Board of Directors shall

be filled. If the By-Laws make no provision for filling a vacancy, the Board of Directors must appoint a member to fill the vacancy.

Civil Code, Section 305.

Section 866.—CAN A CORPORATION PERFORM CORPORATE ACTS, SUCH AS THE MORTGAGING OF ITS REAL PROPERTY, WHILE THERE IS A VACANCY IN ITS BOARD OF DIRECTORS?—This question was a new one in the United States prior to the year 1899. In that year the Supreme Court of California made a decision in a case where this question was directly raised, (where there was a vacancy in a Board of five, and the remaining four members, without filling the vacancy, undertook to authorize a mortgage of the corporation's real estate), holding that a vacancy in the Board does not prevent it from acting so as to bind the corporation, if there is a majority of a full Board remaining. Chief Justice Beatty, giving the decision of the Court, said on this subject: "The By-Laws of this corporation, and, I suppose, its Articles of Incorporation, provided for a Board of five Directors, and the question is whether during a vacancy in one of these directorships the four remaining Directors could lawfully assemble for the transaction of any business except the filling of such vacancy. Counsel have not cited any case decided in this State or any other in the United States in which this question has been directly decided. It is no doubt true that Directors owe to their constituents the duty of keeping the Board full, by promptly filling vacancies as they occur; and this for the reason that shareholders are entitled to the benefit of the experience and advice of all the members of a full Board in the transaction of all its business. When the Directors violate this duty, there may be sound reasons for holding that they should not be allowed to take any advantage, as against the shareholders, of acts or resolutions passed when a full Board was not in existence. But when the corporation is dealing with a stranger, who, acting in good faith and in

ignorance of the existence of a vacancy in the Board of Directors, parts with his property on the faith of what he is induced to believe is a valid corporate obligation, the case is certainly very different in its substantial merits. The votes of a majority of a full Board may authorize a corporate act, although there may be a vacancy in the Board." (Decided by the Supreme Court in the case of *Porter vs. Lassen County Land and Cattle Company*, which decision is printed in Volume 127 of the California Reports, page 661.)

Section 867.—SERVICES OF DIRECTOR OUTSIDE OF HIS DUTIES AS SUCH.—Where a Director of a corporation performs services as its manager, or in any other legitimate way, not pertaining to his duties as Director, he is entitled to recover from the corporation the reasonable value of such services, though no rate of compensation was fixed by the Board of Directors prior to performance of the services. (Decided by the Supreme Court in the case of *Bassett vs. Fairchild*, which decision is printed in Volume 132 of the California Reports, page 631.)

Section 868.—LIABILITY OF DIRECTORS FOR MONEY EMBEZZLED.—The Directors of a corporation are individually and personally liable to its creditors for money embezzled by any of the officers of the corporation. This the Constitution of the State declares. But they are liable only to all the creditors, and one creditor cannot sue alone to recover his debt by reason of failure to pay when the funds of a corporation have been embezzled. All the creditors must be joined in such a suit, and the money recovered to the corporation from the Directors will constitute a trust fund to be paid to all the creditors.

Section 869.—ADVANCES OF MONEY BY DIRECTOR.—Where money is advanced to a corporation by a Director, when the corporation is in debt and unable to

obtain money from other sources, and such money is received and made use of in the business of the corporation, it will be liable to him for the repayment of the sum advanced.

Section 870.—DIRECTORS IN TWO CORPORATIONS.—The fact that two corporations have the same Directors, or that some of the Directors in one are also Directors in the other, does not prevent the two corporations from dealing with each other. Where two corporations, through their Boards of Directors, make a contract with each other, the Directors who are common to both are not within the rule which prohibits one who acts in a fiduciary capacity from dealing with himself. Two corporations have the right, within the scope of their chartered powers, to deal with each other; and this right is not destroyed by the fact that some, or even a majority, of the Directors are common to both. Of course, if such Directors should wrongfully use their powers to the prejudice of one of the corporations, their action could be set aside for fraud. But common Directors owe the same fidelity to both corporations, and there is no presumption that they will deal unfairly with either; and therefore their acts as such common Directors are not void.

Section 871.—AUTHORITY OF PRESIDENT.—The President of a corporation may have more extensive powers conferred upon him than a strict interpretation of the law would show. The Directors of a business corporation have power, by resolution, to give the President general authority to incur debts, negotiate loans, enter into contracts, and otherwise act as the agent of the corporation; and where a resolution of this kind is passed at a meeting of the Directors, unless it is in direct conflict with the By-Laws, the President will have authority to do all such acts on behalf of the corporation as are mentioned in the resolution. (Decided by the Supreme Court in the case of McCormick

vs. Stockton and Tuolumne County R. R. Company, which decision is printed in Volume 130 of the California Reports, page 100.)

Section 872.—PRESIDENT MAY EMPLOY ATTORNEY.—The President of a corporation has power to employ an attorney, when the exigencies of his company require it. He need not obtain the consent of the Directors or stockholders to do this. By virtue of his position as official head of the corporation he has the power to do so.

Section 873.—DIVIDENDS.—The Directors of a corporation cannot make dividends, except from the surplus profits arising from the business. The Directors cannot withdraw, divide, or pay to the stockholders, or any of them, any part of the capital stock, while the corporation is a going concern.

Civil Code, Section 309.

Section 874.—AGREEMENT TO DIVIDE CAPITAL STOCK AMONG STOCKHOLDERS VOID.—An agreement upon the part of a corporation to divide its whole capital stock among its stockholders, prior to its dissolution, is void.

Where a corporation wrongfully pays to some of its stockholders their proportionate share of the money received from the sale of the entire property of the corporation, the remedy of a stockholder who has not been paid is to compel the restoration of the funds illegally distributed.

(Decided by the Supreme Court of California, in the case of Tapscott vs. Mexican Colorado River Land Company, which decision is printed in California Decisions, Volume 35, page 598.)

Section 875.—EXTENT OF DEBTS TO BE CREATED.—The Directors of a corporation have no power to create debts beyond the amount of the subscribed capital stock. If they create debts beyond the capital stock, the Directors are individually, jointly, and severally liable to

the corporation and the creditors for such debts. A Director, however, who is not present at the meeting when the debt is created, or who has his dissent to the Board's action entered on the minutes, will not be liable.

Civil Code, Section 309.

Section 876.—RECORDS OF CORPORATION.—All corporations for profit in California are required by the law to keep a record of all their business transactions; a journal of all meetings of their Directors, members, or stockholders, with the time and place of holding the same, whether regular or special, and if special, its object, how authorized, and the notice thereof given. The record must embrace every act done or ordered to be done; who were present, and who absent; and, if requested by any Director, member, or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request, the ayes and noes must be taken on any proposition, and a record thereof made. On similar request, the protest of any Director, member, or stockholder, to any action or proposed action, must be entered in full. All such records must be open to the inspection of any Director, member, stockholder, or creditor of the corporation. Corporations for profit must also keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders, or members, alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale, or transfer of stock made, the date thereof, and by and to whom; and all such other records as the By-Laws prescribe. Such "Stock and Transfer Book" must be kept open to the inspection of any stockholder, member, or creditor.

Civil Code, Sections 377, 378.

Section 877.—REMOVAL OF DIRECTORS FROM OFFICE.—No Director can be removed from office, unless by a vote of two-thirds of the members, or of stockholders

holding two-thirds of the capital stock, at a general meeting held after previous notice of the time and place, and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the President or by a majority of the Directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing, and addressed to the Secretary, who must thereupon give notice of the time, place, and object of the meeting, and by whose order it is called. If the Secretary refuse to give the notice, or if there is no Secretary, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting.

Section 878.—EXAMINATION OF CORPORATIONS.—As the right of corporations to exist and do business comes from the State, it follows logically that the State retains the power to examine into the affairs of all corporations at any time. The law provides that the Governor may require the Attorney-General, or the District Attorney of any county, to make an examination into the affairs of a corporation and report to the Governor. The Legislature may also examine into the condition and affairs of a corporation, by a committee appointed by either the Senate or Assembly. And the Legislature may dissolve all corporations by repealing the laws under which they were created.

Civil Code, Sections 382, 383, 384.

Section 879.—DISSOLUTION OF CORPORATION.—The dissolution of a corporation may be voluntary, or involuntary. It is voluntary, when the dissolution is effected by consent of the stockholders or members. It is involuntary, when the dissolution is compelled against or without the consent of the stockholders or members. If voluntary, an application is made to the Superior Court of the county where the principal place of business of the corporation is. This application to the Court must first

be authorized by a resolution of the members or stockholders, adopted by a two-thirds vote of the members, where there is no capital stock, or by a vote of the holders of two-thirds of the subscribed capital stock; and it must also appear that all claims and demands against the corporation have been paid and discharged. A corporation may also be dissolved against the consent of the stockholders by a judgment of dissolution in a suit brought by the Attorney-General. In such a suit, if it appears that the corporation is doing a business not provided for by its charter, or has ceased to do business at all, or its term of existence has expired, or is in such a condition that it can no longer hope to carry out the ends and purposes of the corporation, the corporation will be declared dissolved by judgment of the Court.

Code of Civil Procedure, Sections 803, 1227, 1228.
Act of the Legislature, in effect May 17, 1907.

Section 880.—DISPOSITION TO BE MADE OF PROPERTY UPON DISSOLUTION.—Upon the dissolution of a corporation, the capital stock, and all property belonging to the corporation, will be divided among the stockholders in proportion to the number of shares held by each. But before any such division can be made, it must appear that all debts of the corporation have been paid. The Directors of a dissolved corporation have authority to go on and make final settlement of its affairs, and have power to make a division of the property left over after the payment of the debts.

Civil Code, Section 309.

Section 881.—FALSE REPORTS.—Any officer of a corporation who wilfully gives a certificate, or wilfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, is liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers

unite or participate in the commission of any of such acts, they are jointly and severally liable.

Civil Code, Section 316.

Section 882.—TRANSFER OF FRANCHISE.—No sale, lease, assignment, transfer, or conveyance of the business, franchise, and property, as a whole, of any corporation is valid without the consent of stockholders holding of record at least two-thirds of the issued capital stock of the corporation; such consent to be either expressed in writing, executed and acknowledged by such stockholders, and attached to such sale, lease, assignment, transfer, or conveyance, or by a vote at a stockholders' meeting called for that purpose; but with such assent so expressed, such sale, lease, assignment, transfer, or conveyance is valid.

Statutes of 1903, page 396.

Section 883.—TRANSFER OF FOREIGN CONCESSIONS.—A corporation owning grants, concessions, franchises, and property, in a foreign country, has the right under our laws to sell and convey the same; but such sale and conveyance can only be made by a resolution adopted by the vote of a majority of the Board of Directors, and the written consent of the holders of two-thirds of the capital stock.

Statutes of 1899, page 95.

Section 884.—GENERAL POWERS OF CORPORATION.—The law provides what shall be the general powers of a corporation in California. Every corporation in California has power, (1) To sue and be sued in any court; (2) To make and use a common seal, and alter the same at pleasure; (3) To purchase, hold, and convey such real and personal estate as the purpose of the corporation may require; (4) To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation; (5) To make By-Laws, not inconsistent with any existing law, for the management of

its property, the regulation of its affairs, and for the transfer of its stock; (6) To admit stockholders or members, and to sell their stock or shares for the payment of assessments or installments; (7) To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purpose of the corporation. The manner of the exercise of these general powers has already been stated in preceding sections.

Civil Code, Section 354.

Section 885.—TAXATION OF CORPORATIONS.—

Shares of stock in corporations possess no intrinsic value over and above the actual value of the property of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations (except the property of national banking associations not assessable by Federal statute) can be assessed and taxed. But no assessment can be made of shares of stock in any corporation (except in national banking associations, whose property, other than real estate, is exempt from assessment by Federal statute.)

Statutes of 1899, page 96.

Section 886.—LIABILITY OF FOREIGN CORPORATION FAILING TO FILE CERTIFIED COPY OF ARTICLES OF INCORPORATION.—

Every foreign corporation, organized outside of California, must file with the Secretary of State, and with the County Clerk of the county in which its principal place of business is situated in this State, and also with the County Clerk of any county in this State where such corporation owns property, a certified copy of its charter or Articles of Incorporation. For a failure to do this, the corporation will be subject to a fine of not less than \$500; and no foreign corporation can maintain any suit or action in any of the courts of this State, or acquire or convey any legal title

to any real property within this State, until it has complied with the law.

Civil Code, Sections 408, 410.

Act of the Legislature, approved April 26, 1911.

Section 887.—DUTY OF CORPORATIONS SUPPLYING GAS, ELECTRICITY, STEAM OR HEAT.

—Upon the application in writing of the owner or occupant of any building or premises distant not more than one hundred feet from any gas or steam main, or direct or primary wire of the corporation, and payment by the applicant of all money due from him, the corporation must supply gas, electricity, steam or heat as required for such building or premises, and cannot refuse on the ground of any indebtedness of any former owner or occupant thereof, unless the applicant has undertaken to pay the same. If, for the space of ten days after such application, the corporation refuses or neglects to supply the gas, electricity, steam or heat required, it must pay to the applicant, the sum of fifty dollars as liquidated damages and five dollars per day, as liquidated damages for every day such refusal or neglect continues thereafter.

Act of the Legislature, approved April 12, 1911.

PART VII.

BANK LAWS OF CALIFORNIA.

Section 888.—DIVISION OF BANKS INTO CLASSES.—The word “bank” as used in this act includes every person, firm, company, co-partnership or corporation which conducts the business of receiving money on deposit. Banks are divided into the following classes:

- (a) Savings banks;
- (b) Commercial banks; and
- (c) Trust companies.

The term “savings bank,” when used in this act, means a bank organized for the purpose of accumulating and loaning the funds of its members, stockholders, and depositors, and which may loan and invest the funds thereof, receive deposits of money; loan, invest and collect the same with interest; and may repay depositors with or without interest, and having power to invest said funds in such property, securities and obligations as may be prescribed by this act; and to declare and pay dividends on its general deposits, and a stipulated rate of interest on deposits made for a stated period or upon special terms.

The term “commercial bank,” when used in this act, means any bank authorized by law to receive deposits of money, deal in commercial paper or to make loans thereon, and to lend money on real or personal property, and to discount bills, notes, or other commercial paper, and to buy and sell securities, gold and silver bullion, or foreign coins or bills of exchange.

The term “trust company,” when used in this act, means any company which is incorporated for the purpose of conducting the business of acting as executor, administrator, guardian of estates, assignee, receiver, depository or trustee.

Act of the Legislature, approved March 1, 1909.

Section 889.—FOREIGN CORPORATIONS.—No foreign corporation shall transact a banking business in this State without first complying with all the requirements of the laws of this State relative to banks as defined in this act, and without having the capital paid up in this State as required by this act. And no such foreign corporation shall transact any banking business in this State until it has executed and filed with the Superintendent of Banks a written instrument appointing such superintendent, or his successor in office, its true and lawful attorney, upon whom all process in any action or proceeding by any resident of the State against it may be served, with the same effect as if such corporation was formed under the laws of this State and had been lawfully served with process therein. Service in favor of a resident of this State upon such attorney shall be deemed personal service on such corporation. The Superintendent of Banks shall forthwith forward by mail a copy of every process served upon him under the provisions of this section, postage prepaid, and directed to the Secretary of such corporation, at its last known post office address. For each copy of process, the Superintendent of Banks shall collect the sum of two dollars, which shall be paid by the plaintiff or moving party at the time of such service, to be recovered by him as part of his taxable costs if he succeed in the suit or proceeding.

Every corporation, at the time it applies for a certificate to do a banking business, must file with the Superintendent of Banks a certified copy of its articles of incorporation, or of the statute chartering such corporation, also all instruments amending or altering such articles of incorporation or charter. Thereafter all amendments and certificates shall likewise be so filed before such instruments take effect. In like manner all co-partnerships shall file certified copies of their articles of co-partnership and all amendments thereto.

Act of the Legislature, approved March 1, 1909.

Section 890.—BRANCH BANKS.—No bank in this State, or any officer or director thereof, shall hereafter open

or keep an office other than its principal place of business, without first having obtained the written approval of the Superintendent of Banks to the opening of such branch office, which written approval may be given or withheld in his discretion, and shall not be given by him until he has ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch office; and, provided further, that no bank or any officer or director thereof, shall open or maintain such branch unless the capital of such bank, actually paid in cash, shall exceed the amount required by this act by the sum of twenty-five thousand dollars for each branch office opened and maintained. Every bank, and every such officer or director violating the provisions of this section shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 891.—BANK DIRECTORS.—No person shall be eligible for election as a director of a bank unless he is a stockholder of the bank, owning, in his own right, shares thereof of the actual market value of at least five hundred dollars; and every person elected to be director who, after such election, shall cease to be the owner in his own right of the amount of stock aforesaid, shall then cease to be a director of the bank, and his office shall then become vacant. If a bank be organized without capital stock, no person shall be eligible as a director thereof unless he is both a member and a depositor of such bank.

Act of the Legislature, approved March 1, 1909.

Section 892.—MEETINGS OF BANK DIRECTORS.—The Board of Directors of a bank must hold a meeting at least once a month.

Act of the Legislature, approved April 21, 1911.

Section 893.—OATH OF DIRECTORS.—Each director, when appointed or elected, shall take an oath that he will, so far as the duty devolves on him, diligently and honestly

administer the affairs of such bank, and will not knowingly violate or wilfully permit to be violated any of the provisions of law applicable to such bank, and that he is the owner in good faith and in his own right of the shares of stock of the actual market value required by this act, subscribed by him or standing in his name on the books of the bank, and that the same is not hypothecated or in any way pledged as security for any loan or debt; and, in case of re-election or re-appointment, that such stock was not hypothecated or in any way pledged as security for any loan or debt during his previous term. Such oath shall be subscribed by the director making it, and certified by the officer before whom it is taken; and shall be immediately transmitted to the Superintendent of Banks, and filed and preserved in his office.

Act of the Legislature, approved April 21, 1911.

Section 894.—ADVERTISING BY BANK.—Every person, firm, company, co-partnership or corporation advertising that he or it is transacting the business of a bank, savings bank, or trust company, or making use of any office sign at the place where such business is transacted, having thereon any artificial or corporate name, or, in other words, indicating that such place or office is the place or office of a bank, or that deposits are received there or payments made on check, or that interest is paid on deposits, or that certificates of deposit, either with or without interest, are being issued, or that any other form of banking business is transacted, and every person, firm, company, co-partnership or corporation making use of or circulating any letter-heads, bill-heads, blank notes, blank receipts, certificates or circulars, or any written or printed, or partly written and partly printed, paper, whatever, having thereon any artificial or corporate name, or advertising that such business is the business of a bank, savings bank or trust company, must have the proper capital stock paid in and set aside for the purpose of transacting such business, as provided for in this act. And every person, firm, company, co-partnership or

corporation doing any of the things or transacting any of the business defined in this section, must transact such business according to the provisions of the bank act.

Nothing in this section contained shall prohibit building and loan associations from receiving deposits of money and executing certificates therefor in accordance with the laws governing such associations, but all such certificates other than certificates of stock must designate on the face thereof the terms under which such certificates are issued.

Any violation of this law is a misdemeanor.

Act of the Legislature, approved April 21, 1911.

No bank, or any officer thereof, shall advertise in any manner, or publish any statement of the capital authorized or subscribed, unless it or he advertise and publish, in connection therewith, the amount of capital actually paid up. Any bank, or any officer thereof, advertising in any manner, or publishing any statement of such capital, authorized or subscribed, without a statement in connection therewith of the capital actually paid up, shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 895.—DEPOSITS OF DEAD PERSONS.—

The President or managing officer of every bank must, within fifteen days after the first day of January of every odd numbered year, return to the Superintendent of Banks a sworn statement showing the names of depositors known to be dead, or who have not made further deposits, or withdrawn any moneys during the preceding ten years. Such statements shall show the amount of the account, the depositor's last known place of residence or post office address, and the fact of death, if known to such President or managing officer. Such President or managing officer must give notice of these deposits in one or more newspapers published in or nearest to the town or city where such bank has its principal place of business, at least once a week for four consecutive weeks, the cost of such publication to be

paid pro rata out of such unclaimed deposits. This section does not apply to any deposit made by or in the name of a person known to the President or managing officer to be living, or which, with the accumulation thereon, is less than fifty dollars. The Superintendent of Banks must incorporate in his subsequent report such returns made to him as provided in this section. Any President or managing officer of any bank who neglects or refuses to make the sworn statement required by this section shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 896.—DEPOSITS OF MARRIED WOMEN OR MINORS.—When any deposit with a bank shall be made by or in the name of any married woman or minor, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all other persons, except creditors, and shall be paid, together with the dividends, if any, and interest, if any, thereon to the person in whose name deposits shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the bank. When any deposit with a bank shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to such bank, in the event of the death of the trustee, the same or any part thereof, together with the dividends or interest, if any, thereon, may be paid to the person for whom the deposit was made. When a deposit with a bank shall be made by any person in the names of such depositor and another person or persons, and in form to be paid to either or the survivor or survivors of them, such deposit thereupon, and any additions thereto made by either of such persons upon the making thereof, shall become the property of such persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to either during the

lifetime of all or any or to the survivor or survivors after the death of one or more of them, and such payments and the receipt or acquittance of the one to whom such payment is made shall be valid and sufficient release and discharge to said bank for all payments made on account of such deposit.

The surviving husband or wife of any deceased person, or, if no husband or wife is living, then the children of said decedent, or, if no children are living, then the father or mother of such decedent, and if neither the father or mother is living, then the brothers and sisters of such decedent, may, without procuring letters of administration, collect of any bank any sum which said deceased may have left on deposit in such bank at the time of his or her death; provided, such deposit shall not exceed the sum of five hundred dollars. Any bank, upon receiving an affidavit stating that said depositor is dead, and that affiant is the surviving husband or wife, as the case may be, or stating that decedent left no husband or wife, and that affiant is, or affiants are, the children, or stating that decedent left neither husband, wife or children, and that affiant is the father or mother, as the case may be, of said decedent, or stating that the decedent left neither husband, wife, children, father or mother, and that affiants are the brothers and sisters, as the case may be, and that the whole amount that decedent left on deposit in any and all banks of deposit in this State, does not exceed the sum of five hundred dollars, may pay to said affiant or affiants, any deposit of said decedent, if the same does not exceed the sum of five hundred dollars, and the receipt of such affiant is sufficient acquittance therefor.

Act of the Legislature, approved April 21, 1911.

Section 897.—LIST OF STOCKHOLDERS.—Every bank now in existence or hereafter organized shall keep in its offices, in a place accessible to the stockholders, depositors, and creditors thereof, and for their use, a book containing a list of stockholders in such corporation, and the number of shares of stock held by each; and every such bank shall keep posted in its office, in a conspicuous place, accessible to

the public generally, a notice signed by the President or Secretary, showing:

1. The names of the directors of such bank.
2. The number and par value of the shares of stock held by each director.

The entries on such book and such notice shall be made and posted within twenty-four hours after any transfer of stock, and shall be prima facie evidence against each director and stockholder of the number of shares of stock held by each.

Act of the Legislature, approved March 1, 1909.

Section 898.—PARTNERSHIP LIST.—Every co-partnership doing a banking business shall keep in its office, in a place accessible to the partners and depositors and the creditors thereof, a list of the partners and the capital paid into the co-partnership of each partner.

Act of the Legislature, approved March 1, 1909.

Section 899.—DEPOSIT LIABILITIES.—The aggregate of paid-up capital, together with the surplus, of every bank, must equal ten per centum of its deposit liabilities; such deposit liabilities shall not be increased when such proportion of paid-up capital and surplus is wanting, and in no event shall said paid-up capital be less than the minimum paid-up capital provided by this act. And, provided also, that no savings bank shall be required to have a paid-up capital and surplus of more than one million dollars, or if organized without a capital stock, a reserve fund of more than one million dollars.

Act of the Legislature, approved March 1, 1909.

Section 900.—BANK RESERVES.—Every bank, other than a savings bank, shall have at all times as lawful reserve an amount equal to fifteen per centum of the aggregate amount of its deposits; two-fifths of such reserve shall be in its own keeping in lawful money of the United States; one-half of the remainder of such lawful reserve may

consist of moneys on deposit, subject to call, with any bank or banks in this State, other than a savings bank; and the balance of such reserve may consist of moneys on deposit, subject to call, with any bank or banks in the cities of New York, Chicago or St. Louis, other than a savings bank; provided, that every bank receiving deposits as a reserve depository bank of other banks, shall maintain as a lawful reserve at least twenty per centum of the aggregate amount of its deposits; two-fifths of such lawful reserve of such depository bank shall be in lawful money of the United States in its own keeping; one-half of the remainder of such lawful reserve of such depository bank may consist of moneys on deposit, subject to call, with any bank or banks in this State, other than a savings bank; and the balance of such reserve may consist of moneys on deposit, subject to call, with any bank or banks in the cities of New York, Chicago and St. Louis, other than a savings bank.

If the lawful money reserve of any bank shall be less than the amount required by this section, such bank shall not increase its liabilities by making any new loans or discounts, otherwise than by discounting bills of exchange on sight, or making any dividends from profits, until the full amount of its lawful money reserve has been restored. The Superintendent of Banks may notify any bank, whose lawful money reserve shall be below the amount herein required, to make good such reserve; and, if it shall fail for thirty days thereafter to make good such reserve, such bank shall be deemed insolvent and may be proceeded against under the provisions of this act.

Act of the Legislature, approved April 21, 1911.

Section 901.—DEPARTMENTAL BANKING.—Any corporation authorized by its articles of incorporation so to do, may combine the business of a commercial bank, savings bank and trust company, or any or all of them.

Act of the Legislature, approved March 1, 1909.

(a)—**Consent of Superintendent.**—When a bank desires to do a departmental business, it shall first obtain consent of

the Superintendent of Banks, and in its application file a statement making a segregation of its capital and surplus for each department. Such capital and surplus, when so apportioned and approved by the Superintendent of Banks, shall be considered and treated as the separate capital and surplus of such department as if each department was a separate bank.

(b)—**Capital Stock.**—Every bank hereafter organized doing a departmental business shall have paid up in cash a capital stock as follows:

(1) In any city or town in which the population does not exceed five thousand persons, not less than twenty-five thousand dollars, if it transacts both a commercial and savings business; or not less than two hundred and twenty-five thousand dollars if it transacts both a commercial and trust business; or not less than two hundred and twenty-five thousand dollars if it transacts both a savings and trust business; and not less than two hundred and twenty-five thousand dollars if it transacts a commercial, savings and trust business.

(2) In any city in which the population is more than five thousand persons but does not exceed twenty-five thousand persons, not less than fifty thousand dollars if it transacts both a commercial and savings business; or not less than two hundred and fifty thousand dollars if it transacts both a commercial and trust business; or not less than two hundred and fifty thousand dollars if it transacts both a savings and trust business; and not less than two hundred and fifty thousand dollars if it transacts a commercial, savings and trust business.

(3) In any city in which the population is more than twenty-five thousand persons but does not exceed one hundred thousand persons, not less than one hundred thousand dollars if it transacts both a commercial and savings business; or not less than three hundred thousand dollars if it transacts both a commercial and trust business; or not less than three hundred thousand dollars if it transacts both a savings and trust business; and not less than three hundred

thousand dollars if it transacts a commercial, savings and trust business.

(4) In any city in which the population is more than one hundred thousand persons but does not exceed two hundred thousand persons, not less than two hundred thousand dollars if it transacts both a commercial and savings business; or not less than four hundred thousand dollars if it transacts both a commercial and trust business; or not less than four hundred thousand dollars if it transacts both a savings and trust business; and not less than four hundred thousand dollars if it transacts a commercial, savings and trust business.

(5) In any city in which the population exceeds two hundred thousand persons, not less than three hundred thousand dollars if it transacts both a commercial and savings business; or not less than five hundred thousand dollars if it transacts both a commercial and trust business; or not less than five hundred thousand dollars if it transacts both a savings and trust business; and not less than five hundred thousand dollars if it transacts a commercial, savings and trust business. The foregoing classification shall not apply to any bank already in existence which has received its certificate to do a banking business from the Superintendent of banks.

Act of the Legislature, approved April 21, 1911.

(c)—Certificate for Each Department Required.—Every bank, before it commences to do business or before it opens a new department and commences to transact business in or under such new department, shall obtain the certificate of the Superintendent of Banks for the opening of each of the departments specified. Each certificate herein provided for shall be given when the Superintendent shall, by the examination required by this act, have satisfied himself that the proper amount of cash has been paid in as capital and the provisions of this act complied with. The applicant shall pay for such certificate a fee of fifty dollars.

Act of the Legislature, approved March 1, 1909.

(d)—**Department Money Reserve.**—Every bank shall maintain for each department a lawful money reserve equal in amount to that required by this act for the respective business conducted, and shall keep separate and distinct the lawful money reserve of any department from that of any other department; and all deposits made with other banks, whether temporary or otherwise, shall be assets of the respective departments by which they were made, and shall be so carried on the books of such other banks, and shall be repaid only upon the order of the department to whose credit they stand.

No department shall receive deposits of any other department of the same corporation; provided, however, that any bank having departments shall have the right to sell and transfer any bonds, securities or loans from one department to another upon receipt of the actual value thereof, if such bonds, securities or loans are a legal investment for the department purchasing the same under the provisions of this act.

Act of the Legislature, approved March 1, 1909.

(e)—**Books of Account to be Kept Separate.**—Every bank having different departments shall keep separate books of account for each department of its business, and shall be governed as to all deposits, reserves, investments and transactions relating to each department by the provisions in this act specifically provided for the respective kind of business.

It shall keep all investments relating to the savings department entirely separate and apart from the investments of its other department or departments.

Every bank shall conduct the business of all its departments in one building, or in adjoining buildings, and shall keep entirely separate and apart in each department the cash, securities and property belonging to such department, and shall not mingle the cash, securities and property of one department with that of another.

Act of the Legislature, approved March 1, 1909.

(f)—**Security for Depositors.**—All moneys belonging to each department, whether cash on hand or with other banks, and the investments made, shall be held solely for the repayment of the depositors in said department, until all depositors of such department shall have been paid, and the overplus then remaining shall be applied to the other liabilities of such bank.

Act of the Legislature, approved March 1, 1909.

(g)—**Window-signs.**—Every individual, firm or corporation doing a banking business in this state must, on all its window-signs and in advertising, and on letter-heads and other stationery on which its business is transacted, use the word "savings" if it conducts a savings business, "trust" if it conducts a trust department, and the word "commercial" if it conducts a commercial department.

Act of the Legislature, approved March 1, 1909.

Section 902.—UNINCORPORATED BANKERS.—Every person or number of persons, not being incorporated, engaged in the business of banking or publicly receiving money on deposit, must conduct such business under a name which shows the true name of all persons engaged therein, unless such person or persons are doing business as a special partnership.

Act of the Legislature, approved March 1, 1909.

Section 903.—DIVIDENDS.—The directors of banks having a capital stock may, at such times and in such manner as the by-laws prescribe, declare and pay dividends to depositors and stockholders of so much of the profits of the bank, and of the interest arising from the capital and deposits, as may be appropriated for that purpose under the by-laws or under their agreements with depositors, but every such bank shall, before the declaration of such dividend, carry at least one-tenth ($\frac{1}{10}$) part of the net profits of the stockholders for the preceding half-year to its surplus or reserve fund until the same shall amount to twenty-five per centum of its

paid-up capital stock. But the whole or any part of such surplus or reserve fund, if held as the exclusive property of stockholders, may at any time be converted into paid-up capital stock, in which event such surplus or reserve fund shall be restored in manner as above provided until it amounts to twenty-five per centum of the aggregate paid-up capital stock. A larger surplus or reserve fund may be created, and nothing herein contained shall be construed as prohibitory thereof. The capital and the assets of the bank are a security to depositors and stockholders, depositors having the priority of security over the stockholders, but the by-laws may provide that the same security shall extend to deposits made by stockholders.

Act of the Legislature, approved March 1, 1909.

Section 904.—CHANGE TO CAPITAL STOCK.—

Every corporation heretofore created under the laws of this State, doing a banking business therein, and which has no capital stock, may elect to have a capital stock, and may issue certificates of stock therefor; provided, that no such corporation shall use or convert any moneys or funds heretofore belonging to it, or under its control, into capital stock; but such funds or moneys must be held and managed only for the purposes and in the manner for which they were created. Before such change is made, a majority of the members of such corporation present at a meeting called for the purpose of considering the proposition whether it is best to have a capital stock, its amount, and the number of shares into which it shall be divided, must vote in favor of having a capital stock, fix the amount thereof, and the number of shares into which it shall be divided. Notice of the time and place of holding such meeting, and its object, must be given by the president of such corporation by mailing notice of such meeting to each member of such corporation at his last known post office address at least ten days prior to the day fixed for such meeting, and by publication in some newspaper printed and published in the county, or city and county, in which the

principal place of business of the corporation is situated, at least once a week for three successive weeks prior to the holding of such meeting. A copy of the proceedings of this meeting, giving the number of persons present, the votes taken, the notice calling the meeting, the proof of its publication, the amount of capital actually subscribed, and by whom, all duly certified by the president and secretary of the corporation, must be filed in the office of the Secretary of State and clerk of the county where the articles of incorporation are filed. Thereafter such corporation is possessed of all the rights and powers, and is subject to all the obligations, restrictions, and limitations, as if it had been originally created with a capital stock.

Act of the Legislature, approved March 1, 1909.

Section 905.—SAFE DEPOSIT DEPARTMENT.—

Any bank may conduct a safe deposit department, but shall not invest more than one-tenth of its capital and surplus in such safe deposit department.

Act of the Legislature, approved March 1, 1909.

Section 906.—SALE OF ASSETS.—Any bank may sell the whole or any portion of its assets to any other bank which may purchase its assets after obtaining the consent of the stockholders of the selling and of the purchasing bank holding of record at least two-thirds of the issued capital stock of each of such corporations; such consent to be expressed either in writing executed and acknowledged by such stockholders and attached to the instrument of sale, or to a copy thereof, or by vote at a stockholders' meeting of such banks called for that purpose.

The selling and purchasing banks may for such purposes enter into an agreement of sale and purchase, which agreement shall contain all the terms and conditions connected with the sale and purchase of its assets.

Such agreement shall contain proper provision for the payment of liabilities of the selling bank, and in this particular shall be subject to the approval of the Superintendent

of banks; and shall not be valid until such approval is obtained. Such agreement may contain provisions for the transfer of all deposits to the purchasing bank, subject, however, to the right of every depositor of the selling bank to withdraw his deposit in full on demand after such transfer, irrespective of the terms under which it was deposited with the selling bank.

Act of the Legislature, approved March 1, 1909.

Section 907.—TRUST FUNDS.—Any bank receiving trust funds in accordance with the provisions of this act relating to trust companies must not mingle such trust funds with the other assets of the corporation, and such funds shall not be carried nor counted as any part of the lawful reserve provided for in this act. The officers of any bank who knowingly violate or consent to the violation of this provision shall be guilty of a felony.

Act of the Legislature, approved March 1, 1909.

Section 908. — OFFICER MAY NOT BORROW BANK FUNDS.—No officer or employee of any bank shall, directly or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such bank, nor shall he nor any director become an endorser or surety for loans to others, nor in any manner be obligor for moneys borrowed or loaned by such banks; except that a commercial bank may buy from, or discount, for a director of said bank, bills of lading and bills of exchange drawn in good faith against actually existing value actually owned by the director negotiating the same. The office of any officer or employee who acts in contravention of the provisions of this section shall immediately become vacant, and he shall be guilty of a misdemeanor.

Act of the Legislature, approved April 21, 1911.

Section 909.—PURCHASE OF CAPITAL STOCK.—No bank shall purchase or invest its capital or money of its depositors, or any part of either, in the shares of its own

capital stock; nor loan its capital or the money of its depositors, or any part of either, on the shares of its own capital stock, unless such purchase or loan shall be necessary to prevent loss on debts previously contracted in good faith.

Stock thus purchased or carried shall, within six months from the time of its purchase, be sold or disposed of at public or private sale.

The officers of any bank who knowingly violate or consent to the violation of this provision shall be guilty of a felony.

Act of the Legislature, approved March 1, 1909.

Section 910.—OFFICER MAY NOT SELL MORTGAGE ON REAL ESTATE TO BANK.—No director, or officer, or employee, or controlling stockholder of any bank shall, directly or indirectly, for his own account, for himself, or as the partner or agent of others, sell or transfer, or cause to be sold or transferred to the bank of which he is a director, officer, employee, or controlling stockholder, any mortgage on real estate or contract arising from the sale of real estate made by any corporation or syndicate in which such director or officer, or employee, or controlling stockholder is personally or financially interested, without the consent in writing of the superintendent of banks.

Any director, or officer, or employee, or controlling stockholder of any bank who knowingly violates or consents to the violation of this provision shall be deemed guilty of a felony.

Act of the Legislature, approved April 21, 1911.

Section 911.—PURCHASE OF BONDS.—No bank receiving deposits of money shall purchase, agree to purchase, underwrite or guarantee any bond issue in excess of five per centum of its assets, except bonds of the United States, of the State of California, of the cities, cities and counties, counties or school districts of this State.

Act of the Legislature, approved March 1, 1909.

Section 912.—SHARES OF CORPORATIONS.—No bank shall purchase, or invest its capital or money of its depositors, or any part of either, in shares of corporations, unless such purchase shall be necessary to prevent loss on debts previously contracted in good faith, and stock thus purchased or carried shall, within six months from the time of its purchase, be sold or disposed of at public or private sale, unless permission to hold said stock for a longer period shall be obtained from the superintendent of banks.

The officers of any bank who knowingly violate or consent to the violation of this provision shall be deemed guilty of a felony.

Act of the Legislature, approved March 1, 1909.

Section 913.—PENAL LIABILITIES OF DIRECTORS AND EMPLOYEES.—A director, officer, agent or employee of any bank who,

First—Knowingly receives or possesses himself of any of its property otherwise than in payment of a just demand, and with intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

Second—Concurs in omitting to make any material entry thereof; or,

Third—Knowingly concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false; or,

Fourth—Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the books of such corporation as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by the superintendent of banks, his chief deputy or any of his examiners, shall be guilty of a felony.

Act of the Legislature, approved March 1, 1909.

Section 914.—OFFICER OVERDRAWING ACCOUNT.—Any officer, director, agent, teller, clerk or employee of any bank who either,

First. Knowingly overdraws his account with such bank, and thereby obtains the money, notes or funds of any such bank; or,

Second. Asks or receives or consents or agrees to receive any commission, emolument, gratuity or reward, or any money, property or thing of value, for his own personal benefit, or of personal advantage, for procuring or endeavoring to procure for any person, firm or corporation any loan from, or the purchase or discount of any paper, note, draft, check or bill of exchange, by such bank, or for permitting any person, firm or corporation to overdraw any account with such bank, is guilty of a felony.

Act of the Legislature, approved April 21, 1911.

Section 915.—WAIVER OF STOCKHOLDERS' LIABILITY.—No bank mentioned in this act shall make any contract with any of its depositors whereby the stockholders' liability provided for by the constitution of this State is in any manner waived, and if any such contract shall be so made, such contract shall be void.

Act of the Legislature, approved March 1, 1909.

Section 916.—PURCHASE OF OBLIGATIONS.—No director, officer, agent, or servant of any bank shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any of the obligations of said bank for a less sum than shall appear upon the face thereof.

Act of the Legislature, approved March 1, 1909.

Section 917.—PURCHASE OF ASSETS.—No director, officer, agent, or servant of any bank shall, directly or indirectly, for his own personal benefit, purchase or be interested in the purchase of any of the assets of said bank, for a less sum than the current market value thereof. Every person violating the provisions of this subdivision shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 918.—LOANS ON BANK STOCK.—No bank shall hereafter make a loan secured by the stock of another bank, if by making such loan the total stock of such other bank held by such loaning bank as collateral will exceed in the aggregate ten per centum of the capital stock of such other bank; provided that no loan upon the capital stock of any bank shall be made unless such bank has been in existence for two or more years and has earned and paid a dividend upon its capital stock.

Act of the Legislature, approved March 1, 1909.

Section 919.—INTEREST UNPAID.—Interest unpaid, although due and accrued, on debts owing to any bank, shall not be included in calculation of its profits previous to a dividend.

Act of the Legislature, approved March 1, 1909.

Section 920.—LOANS ON BONDS.—No bank shall invest nor loan more than five per centum of its assets in any one bond issue, except bonds of the United States, of the State of California, of the counties, cities and counties, cities or school districts of this State.

Act of the Legislature, approved March 1, 1909.

Section 921.—DEPOSITS IN OTHER BANKS.—No bank shall deposit any of its funds in any other bank unless such other bank has been designated as a depository for its funds by the vote of a majority of the directors or trustees of the bank making the deposit exclusive of the vote of any director who is an officer, director or trustee of the depository so designated; provided, however, that any bank may designate any other bank its depository by a vote of a majority of its directors, including the vote of any director or trustee who is an officer, director or trustee of the depository so designated, if such bank has secured the previous approval of the superintendent of banks.

Act of the Legislature, approved April 21, 1911.

Section 922.—UNLAWFULLY ADVERTISING AS SAVINGS BANK.—It shall not be lawful for any commercial bank, individual banker, trust company, association, firm, stock company or corporation, to advertise or put forth a sign as a savings bank, either directly or indirectly, or in any way to solicit or receive deposits as a savings bank, or in any way which might lead the public to believe that such deposits are received or invested under the same conditions or in the same manner as deposits in savings banks, except in the case of savings banks or banks having a savings department, subject to the provisions of this act.

Act of the Legislature, approved April 21, 1911.

Section 923.—DUTY AS TO CERTIFIED CHECKS.—Whenever a check drawn on any bank is certified by any officer or employee of such bank, the amount thereof shall be immediately charged against the account of the person, firm or corporation drawing the same.

It shall be unlawful for any officer or employee of any bank to certify any check drawn upon such bank unless the person, firm or corporation drawing the check has on deposit with the bank at the time such check is certified, an amount of money subject to the payment of such check, equal to the amount specified in such check.

Any officer or employee of any bank who shall wilfully violate the provisions of this section, or shall resort to any device, or receive any fictitious obligations, directly or indirectly, in order to evade the provisions hereof, or who shall certify checks before the amount thereof shall have been regularly entered to the credit of the drawer, shall be guilty of a felony.

Act of the Legislature, approved April 21, 1911.

Section 924.—LOANS ON REALTY.—No bank shall make any loan on real estate except it be a first lien, but this provision shall not prevent the acceptance of a second lien to secure the payment of a debt previously contracted in good faith.

Act of the Legislature, approved March 1, 1909.

Section 925.—EXAMINATION OF NATIONAL BANKS.—Any national bank of this state receiving the deposits of banks organized and conducting business under this act, must, at the request of the superintendent of banks, submit to an examination by him, or his duly appointed examiners, should the superintendent of banks in his discretion deem it necessary or desirable that such examination be made; and the expense of such examination shall be paid by such national bank; and if any such national bank shall refuse to permit such examination to be made by the superintendent of banks, then the superintendent of banks shall notify in writing any and all banks depositing its funds with such national bank, to withdraw its deposits therefrom, and such bank shall comply with such order, and failure so to do shall be a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 926.—POSTING OF CERTIFICATE.—Every bank shall post in a conspicuous place in its banking-room the last certificate obtained from the superintendent of banks. Every bank that fails to comply with the provisions of this section is guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 927.—DEPOSITS BY ORDER OF COURT.—Any court having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver, depositary or trustee, upon the application of such executor, administrator, guardian, assignee, receiver, depositary or trustee, or upon the application of any person having an interest in the estate administered upon by such officer or trustee, after notice to other parties in interest as the court may direct, and after a hearing upon such application, may authorize such officer or trustee to deposit any money then in his hands as such officer or trustee or which may thereafter come into his hands, and until the further order of the court, in any bank organized under the laws of the State of California;

and upon such deposit being made, the officer or trustee so depositing the same shall thereafter and while such moneys remain on deposit in such bank, be relieved and discharged from all liability or responsibility therefor, and the bond required of such officer or trustee given upon his appointment shall be thereupon by said court reduced to such an amount as the court may deem reasonable; such deposit shall be repaid only upon the orders of said court, and shall be a preferred claim against such bank and be paid in full before any other depositor of such bank shall have been paid.

Section 928.—SAVINGS BANKS.—The law of California regulating the organization and the business of savings banks is as follows:

(a) Capital Stock of Savings Banks.—Every savings bank hereafter organized must have paid up in cash a capital stock of not less than—

(1) Twenty-five thousand dollars, if it transacts business in any city or town the population of which does not exceed five thousand persons;

(2) Fifty thousand dollars, if it transacts business in any city the population of which is more than five thousand persons but does not exceed twenty-five thousand persons;

(3) One hundred thousand dollars, if it transacts business in any city the population of which is more than twenty-five thousand persons but does not exceed one hundred thousand persons;

(4) Two hundred thousand dollars, if it transacts business in any city the population of which is more than one hundred thousand persons but does not exceed two hundred thousand persons;

(5) Three hundred thousand dollars, if it transacts business in any city the population of which is more than two hundred thousand persons.

Excepting that any savings bank organized without capital stock must have a reserve fund of at least one million dollars.

Until the capital stock or reserve fund hereinbefore required shall be actually paid in, the superintendent of banks shall refuse to issue the certificate required by this act.

The foregoing classification shall not apply to any savings bank already in existence which has received its certificate to do a banking business from the superintendent of banks.

Provided, that nothing herein shall be construed to affect the provisions of this act relative to the proportion of capital and surplus deposits or relative to the capital stock required of banks doing a departmental business.

Act of the Legislature, approved April 21, 1911.

(b) Savings Banks Not to Trade in Real Property.—

No savings bank shall, directly or indirectly, deal or trade in real or personal property in any other case or for any other purpose than is authorized by this act, and shall not contract any debt or liability for any purpose whatever other than for deposits, except as in this section provided.

Savings banks may pay regular depositors, when requested by them, by draft upon deposits to the credit with their banks, and charge current rate of exchange for such drafts.

(c) Savings Banks Borrowing Money.—No savings bank shall borrow money, or pledge or hypothecate any of its securities, except to meet the immediate demands of its own depositors, and then only in pursuance of a resolution adopted by a vote of a majority of its board of directors, duly entered upon their minutes, wherein shall be recorded the ayes and nays upon each vote; also with the written approval of the superintendent of banks, and he shall have the authority to fix the amount to be borrowed, and the term and rate of interest thereon; provided, however, that savings banks may, in the manner authorized by law, and without the written approval of the superintendent of banks, borrow the public moneys of the state, counties, cities and counties, and towns, and receive such public moneys on deposit; provided, also, that savings banks may in the manner authorized by law, and without the written approval of the superintendent of banks, borrow postal savings

moneys of the United States, and receive such postal savings moneys on deposit.

Act of the Legislature, approved April 21, 1911.

(d) Personal Property.—No savings bank shall purchase, own, or sell personal property, except such as may be requisite for its immediate accommodation for the convenient transaction of its business, and mortgages on real estate, bonds, securities or evidences of indebtedness, public or private, gold and silver bullion and United States mint certificates of ascertained value, and evidences of debt issued by the United States.

(e) Bonds and Securities.—No savings bank shall purchase, hold or convey bonds, securities or evidences of indebtedness, public or private, except as follows:

(a) Bonds or interest-bearing notes or obligations of the United States, or those for which the faith of the United States is pledged for the payment of interest and principal.

(b) Bonds of this state.

(c) Bonds of any state in the United States that have not, within five years previous to making such investment by such bank, defaulted in the payment of any part of either principal or interest thereof.

(d) Bonds of any city, county, city and county, town, township, or school district of this state; bonds of the permanent road division in any county issued in pursuance of the provisions of part three, title six, article nine of the Political Code; bonds issued by irrigation districts which are permitted to be invested in as provided for in an act of the thirty-ninth session of the legislature entitled "An act relating to the bonds of irrigation districts providing under what circumstances such bonds may become legal investments for the funds of banks, banking associations, trust companies, insurance companies, and for the state school funds, and providing that such bonds may be deposited as security, and providing for a commission for approving such bonds, and for a report thereon, for the filing of such report and for the registration of such bonds in the office of the

state controller," approved March 9, 1911; bonds of any sewer district, drainage district, protection district, or sanitary district, in any county in this state; provided that the total amount of bonds of any sewer district, drainage district, protection district, or sanitary district so issued shall not exceed fifteen per cent of the taxable property of said district as shown by the last equalized assessment book of the county.

(e) Bonds of any city, town or county which has in each case, at the time of the investment, more than twenty thousand inhabitants, as ascertained by the United States, or state census made next preceding such investment, in any of the states of the United States, other than in the State of California, issued pursuant to the authority of any law of such states; provided, the entire bonded indebtedness of such city or county or town shall not exceed fifteen per centum of the assessed value of the taxable property therein, including the issue of bonds in which said investment is made as shown by the last assessment preceding the investment; and provided, further, that such city, town or county or state in which it is situated has not defaulted in payment of any part of either principal or interest thereon within five years previous to making such investment.

(f) First mortgage or underlying bonds of any steam railway, the income of which is sufficient to pay all operating expenses and fixed charges, and which is completed and operated, wholly or in part, in any of the states of the United States.

(g) Bonds of street railroads, water, light, light and power, gas, and other public utility and industrial corporations.

All bonds authorized for investment by this section shall be secured by a mortgage or trust deed, which is, at the time of making such investment, (1) a first or underlying mortgage or trust deed of the corporation issuing said bonds, or (2) a refunding mortgage or trust deed used to retire all prior lien mortgage debts of said corporation outstanding at the time of making said investment; provided, that the income of such corporation is sufficient to pay all operating expenses and fixed charges, including interest on all of its

mortgage indebtedness, and that the income of such corporation or of the corporation or corporations out of which it shall have been formed through consolidation shall have been sufficient to pay its operating expenses and fixed charges including interest on all mortgage indebtedness for a period of three years next preceding the purchase of such refunding bonds, or that payments of its said bonds have been guaranteed by a corporation that has paid all its operating expenses and fixed charges for a period of three years prior to guaranteeing the payment of such bonds.

(h) First mortgage bonds or deeds of trust issued by real estate corporations; provided, that said bond issue shall not exceed sixty per centum of the market value of the real estate taken as security.

No savings bank shall purchase the bonds of any corporation or make a loan on the bonds of any corporation, if the main or principal franchise of such corporation expires prior to the maturity of its bonds, or if the main or principal franchise or special privilege granted to such corporation by any city, county, or city and county, expires before the maturity of such bond issue.

(i) Collateral trust bonds when secured by a deposit of an equal amount of bonds which are authorized for investment by this section and a sufficient amount of other security so that the bonds shall represent not more than ninety per cent (90%) of the market value of the total security pledged therefor.

Act of the Legislature, approved April 21, 1911.

(f) **Reserve Fund.**—Every savings bank or savings bank department of a bank, shall at all times maintain a lawful money reserve equivalent to four per centum of the aggregate amount of its deposits; one-half of such reserve shall be kept on hand in lawful money of the United States, and one-half may consist of bonds of the United States or of lawful money of the United States on hand or on deposit subject to call with any reserve bank provided for in this act; provided, however, that no savings bank or department

shall be required to maintain in its own keeping a reserve in lawful money of the United States in excess of four hundred thousand dollars, and when the reserve in its own keeping reaches that amount, the balance of cash necessary to make up the four per centum, may be kept on deposit subject to call with any reserve bank provided for in this act.

No new loan shall be made during any deficiency in the lawful money reserve.

(g) **Commercial Deposits.**—Deposits with the commercial banks, or commercial departments, on open account, to facilitate business transactions, as provided in this section, shall be permitted, and shall not be construed as loans.

Not more than eight per centum of the deposits of any savings bank shall be deposited with any one bank.

No savings bank or savings department shall receive deposits of other banks other than savings deposits, and such deposits shall not be treated or considered as a part of the legal reserve of such depositing bank, and provided that the sum so deposited shall not exceed the sum of ten thousand dollars in any one bank.

(h) **Estate Moneys.**—Where a decedent, at the time of his or her death, left moneys on deposit with a savings bank, it shall be lawful for any public administrator, who shall become the administrator of the estate, to allow such deposit to remain in said savings bank, and also, it shall be lawful for him to deposit therein to the account of said decedent, any and all moneys of said estate not required for the current expenses of administration. Such deposit, whether made by the decedent or a public administrator, shall relieve the public administrator from depositing the same with the county treasurer. Moneys so deposited, whether by the decedent or by a public administrator, may be drawn upon demand without notice, upon the order of said administrator, countersigned by a judge of a superior

court, when required for the purpose of administration or otherwise.

Act of the Legislature, approved April 21, 1911.

(i) Certificates of Deposit and Time Certificates.—

Savings banks may issue general certificates of deposit, which are transferable, as in other cases, by indorsement and delivery; may issue, when requested by the depositor, special certificates, acknowledging the deposit by the person therein named of a specified sum of money, and expressly providing on the face of such certificate that the sum so deposited and therein named may be transferred only on the books of the bank; payment thereafter made by the bank to the depositor named in such certificate, or to his assignee named upon the books of the bank, or in case of death, to the legal representative of such person, of the sum for which such special certificate was issued, shall discharge the bank from all further liability on account of the money so paid.

All time certificates of deposit issued by a savings bank shall be subject to the same limitations and conditions as applied to other deposits, and notice thereof shall be given by the words "Subject to conditions of agreement with depositors" printed on the face of the certificate issued.

Act of the Legislature, approved March 1, 1909.

(j) Conditions of Payment to Depositors.—

Savings banks may prescribe by their by-laws, or by contract with depositors, the time and conditions on which repayment is to be made to depositors, except as in this act otherwise prohibited; but whenever there is any call by depositors for repayment of a greater amount than the bank may have disposable for that purpose, the directors or officers thereof must not make any new loans or investments of the funds of the depositors, or of earnings thereof, until such excess of call has ceased. The directors of any such bank, having no capital stock, must retain, on each dividend-day, at least ten per centum of the net profits of the bank, to constitute a reserve fund, which must be invested in the same manner

as other funds of the bank, and must be used toward paying any losses which the bank may sustain in pursuing its lawful business. The bank may provide by its by-laws for the disposal of any excess in the reserve fund, as provided for in this act, and the final disposal, upon the dissolution of the bank, of the reserve fund, or of the remainder thereof, after payment of losses.

Act of the Legislature, approved March 1, 1909.

(k) **Directors, Borrowing by, Forbidden.**—No director, or officer of any savings bank must, directly or indirectly, for himself or as the partner or agent of others, borrow any of the deposits or other funds of such bank, nor must he become an indorser or surety for loans to others, nor in any manner be obligor for moneys borrowed of or loaned by such bank. The office of any director or officer who acts in contravention of the provisions of this section immediately thereupon becomes vacant, and every director or officer authorizing or consenting to such loan, and the person who receives such loan, shall severally be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

(l) **"Creation of Debt."**—Receiving deposits, issuing certificates of deposit, checks, and bills of exchange, and the like, in the transaction of the business of savings banks, must not be construed to be the creation of debt within the meaning of the phrase "create debt" in the Civil Code.

(m) **Limit on and Security for Loans.**—No savings bank shall loan money except on adequate security of real or personal property, and no such loan shall be made for a period longer than ten years; provided that no loans shall be made on unsecured notes.

No savings bank shall invest or loan more than five per centum of its assets on any one bond issue, except bonds of the United States, of the State of California, of the

counties, cities and counties, cities or school districts of this state.

No savings bank shall loan money to exceed ninety per centum of the market value of bonds specified in subdivisions (a), (b), (c) and (d), and no more than eighty-five per centum of the market value of bonds specified in subdivision (e) and no more than seventy-five per centum of the market value of bonds specified in subdivisions (f) and (g), and no more than sixty-five per centum of the market value of personal property and stocks of corporations or banks; provided, however, that no loan shall be made upon the capital stock of any corporation or bank unless such corporation or bank has been in existence for two or more years and has earned and paid a dividend on its capital stock.

No savings bank shall make any loan on the security of real estate except it be a first lien and in no event to exceed sixty per centum of the market value of any piece of real estate to be taken as security, except for the purpose of facilitating the sale of property owned by the savings bank; provided, that a second lien may be accepted to secure the repayment of a debt previously contracted in good faith.

No savings bank shall purchase, invest or loan its capital or the money of its depositors, or any part of either, in mining shares or stock.

No savings bank shall hereafter make a loan secured by the stock of another bank, if by making such loan the total stock of such other bank held by such loaning bank as collateral will exceed in the aggregate ten per centum of the capital stock of such other bank.

Any president or managing officer who knowingly consents to a violation of the above provisions shall be deemed guilty of a felony.

Act of the Legislature, approved March 1, 1909.

(n) What Property May be Held by Savings Bank.—Savings banks may purchase, hold, and convey real and personal property as follows:

1. The lot and building in which the business of the bank is carried on; such a lot and building shall not cost the savings bank an amount exceeding its capital and surplus; and the authority of a two-thirds vote of a full board of directors shall be necessary to authorize the purchase or construction thereof.

2. Such as may have been mortgaged, pledged, or conveyed to it in trust for its benefit in good faith, for money loaned in pursuance of the regular business of the corporation.

3. Such as may have been purchased at sales under pledges, mortgages or deeds of trust made for its benefit for money so loaned, and such as may be conveyed to it by borrowers in satisfaction and discharge of loans made thereon.

No savings bank shall purchase, hold, or convey real estate in any other case or for any other purpose; and all real estate described in subdivision three of this section must be sold by the bank within ten years after the title thereto is vested in it by purchase or otherwise, unless permission to hold said real estate for a longer period be given by the superintendent of banks in writing. Parcels of real estate not sold within ten years, or extension of said period as above provided, may be purchased by any persons or parties wanting them, at the price to be determined by arbitration of three persons appointed by the Superior Court as appraisers, at the request of the would-be purchaser.

Section 929.—COMMERCIAL BANKS.—There are certain regulations which are intended to apply particularly to commercial banks.

(a) **Limit of Loans.**—No commercial bank shall make any loans to any person, company, corporation or firm to an amount exceeding one-tenth part of the capital stock of such bank actually paid in and surplus, excepting that no commercial bank shall be prohibited by this act from loaning to any person, company, corporation or firm any sum not exceeding five thousand dollars without security; provided,

however, that a bank may loan to any person, company, corporation or firm a sum not exceeding twenty-five per centum of its capital stock actually paid in and surplus upon security, worth at least fifteen per centum more than the amount of its loans; or it may loan ten per centum of such capital and surplus as first above provided, and a further sum not exceeding fifteen per centum of such capital and surplus upon security worth at least fifteen per centum more than the amount of such loan so secured; except that a commercial bank may buy from, or discount, for any person, company, corporation or firm, or loan upon bills of lading, and bills of exchange, drawn in good faith against actual existing value or against commercial or business paper actually owned by the person negotiating the same; provided, however, that at no time shall the loans on or purchases of bills of lading or such bills of exchange, made to any one person, company, corporation or firm exceed seventy-five per centum of the capital and surplus of such bank.

Act of the Legislature, approved April 21, 1911.

(b) **Loans on Securities of Corporations.**—No loan shall be made by any commercial bank upon the securities of one or more corporations, the payment of which is undertaken, in whole or in part, severally, but not jointly, by two or more individuals, firms, or corporations:

(1) If the borrowers or underwriters be obligated absolutely or contingently to purchase the securities, or any of them, collateral to such loan, unless the borrowers or underwriters shall have paid on account of the purchase of such securities an amount in cash, or its equivalent, equal to at least twenty-five per centum of the several amounts for which they remain obligated in completing the purchase of such securities;

(2) If the commercial bank making such loan be liable, directly or indirectly, or contingently, for the repayment of such loan or any part thereof;

(3) If its term, including any renewal thereof by agreement, express or implied, exceed the period of one year;

(4) Or to an amount under any circumstances in excess of twenty-five per centum of the capital and surplus of the commercial bank making such loan.

Act of the Legislature, approved March 1, 1909.

(c) **Capital of Commercial Bank.**—Every commercial bank hereafter organized, shall have paid up in cash a capital stock of not less than

(1) Twenty-five thousand dollars in any city or town the population of which does not exceed five thousand persons;

(2) Fifty thousand dollars in any city the population of which is more than five thousand persons but does not exceed twenty-five thousand persons;

(3) One hundred thousand dollars in any city the population of which is more than twenty-five thousand persons but does not exceed one hundred thousand persons;

(4) Two hundred thousand dollars in any city the population of which is more than one hundred thousand persons but does not exceed two hundred thousand persons;

(5) Three hundred thousand dollars in any city the population of which is more than two hundred thousand persons.

The foregoing classification shall not apply to any commercial bank already in existence which has received its certificate to do a banking business from the superintendent of banks.

Act of the Legislature, approved April 21, 1911.

(d) **Loans to Bank Directors.**—No commercial bank shall loan any of its funds to any of its directors unless such loan shall first have been approved by a two-thirds vote of its board of directors, on which vote the borrowing director shall not participate, and the fact of making such loan, the name of the director borrowing the same, the time when the same shall become due, the rate of interest thereon, and the amount, value and character of security pledged therefor, if any, shall be forthwith forwarded by the cashier of such bank to the superintendent of banks; and if the superintendent of banks shall disapprove of such loan he shall immediately notify such bank of his disapproval thereof and such bank shall forthwith collect such loan; provided,

however, that the total loans to all directors of such bank shall not at any one time exceed fifty per cent of the capital and surplus of such bank, and provided further, that each bank having any loan or loans outstanding to any of its directors, shall once each month report in writing to the superintendent of banks the name of each director to whom such loan is made, and amount of such loan, the rate of interest thereon, the time when the same shall fall due, and the security pledged therefor, if any. Any officer or director of any commercial bank violating any of the provisions of this section shall be guilty of a felony.

Act of the Legislature, approved April 1, 1911.

(e) **Investments in Bank Premises.**—No commercial bank shall invest an amount exceeding its capital and surplus in its bank premises without the approval of the superintendent of banks; and the authority of a two-thirds vote of a full board of directors shall be necessary to authorize the purchase or construction thereof.

Act of the Legislature, approved April 21, 1911.

Section 930.—TRUST COMPANIES.—The law makes specific provisions regarding the power and the limitations of business of trust companies in California.

(a) **Execution of Trusts.**—Any corporation which has been or shall be incorporated under the general incorporation laws of this State, authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depositary or trustee, and having a capital of not less than two hundred thousand dollars actually paid in, in cash, may be appointed to act in such capacity in like manner as individuals and shall be known as a trust company. In all cases in which it is required that an executor, administrator, guardian, assignee, receiver, depositary, or trustee, shall qualify by taking and subscribing an oath, or in which an affidavit is required, it shall be a sufficient qualification by such corporation if such oath shall be taken and subscribed or such affidavit made by the president or secretary

or manager or trust officer thereof, and such officer shall be liable for the failure of such trust company to perform any of the duties required by law to be performed by individuals acting in like capacity and subject to like penalties; and such trust company shall be liable for such failure to the full amount of its capital stock; provided, any such appointment as guardian shall apply to the estate only, and not to the person. Such trust company shall be entitled to and shall be allowed proper compensation for all the services performed by them under the foregoing provisions of this act; but such compensation shall not exceed that allowed to natural persons for like services.

Act of the Legislature, approved March 1, 1909.

(b) **Deposits by Order of Court.**—Any court, having appointed and having jurisdiction of any executor, administrator, guardian, assignee, receiver, depositary, or trustee, upon the application of such officer or trustee, or upon the application of any person having an interest in the estate administered by such officer or trustee, after notice to the other parties in interest as the Court may direct, and after a hearing upon such application, may authorize such officer or trustee to deposit any moneys then in his hands, or which may come into his hands thereafter, and until the further order of said Court, with any such trust company; and upon deposit of such money, and its receipt and acceptance by such trust company, the said officer or trustee shall be discharged from further care or responsibility therefor. Such deposits shall be paid out only upon the orders of said Court.

Act of the Legislature, approved March 1, 1909.

(c) **Deposits by Public Administrator.**—It shall be lawful for any public administrator to deposit with any trust company having not less than two hundred thousand dollars paid-up capital, doing business in the county, or city and county, in which he is acting as such administrator, any and all moneys of any estate upon which he is administering, not required for the current expenses of the administration;

provided, that such corporation deposit with the State Treasurer the securities required by this act. Such deposits shall relieve the public administrator from depositing with the County Treasurer the moneys so deposited with such corporation. Moneys so deposited by a public administrator may be drawn, upon the order of such administrator, countersigned by a judge of a Superior Court, when required for the purpose of administration, or otherwise.

Act of the Legislature, approved March 1, 1909.

(d) Deposits by Executors, Guardians, and Others.—Whenever, in the judgment of any Court having jurisdiction of any estate in process of administration by any executor, administrator, guardian, assignee, receiver, depository, or trustee, and after such notice to the parties in interest as the Court shall direct, and after a hearing on such application, the said Court may order the said officer or trustee to deposit with any such trust company, for safe keeping, such portion or all of the personal assets of said estate as it shall deem proper; and thereupon said Court shall, by an order of record, reduce the bond to be given or theretofore given by such officer or trustee, so as to cover only the estate remaining in the hands of said officer or trustee; and the property as deposited shall thereupon be held by such trust company, under the orders and directions of said Court. Any Court having jurisdiction of an estate being administered by a public administrator, may direct such public administrator to deposit all or any part of the moneys of the estate not required for the current expenses of the administration, with any such trust company doing business in the county or city and county, where such public administrator is acting.

Act of the Legislature, approved March 1, 1909.

(e) Responsibility of Trust Company.—Such trust company shall not be required to give any bond or security in case of any appointment hereinbefore provided for, except as hereinafter provided, but shall be responsible for all investments which shall be made by it of the funds which

may be entrusted to it for investment by such Court, and shall be liable as natural persons in like positions now are, and as hereinafter provided.

(f) **Interest to be Paid.**—Such trust company shall pay interest upon all moneys held by it as trustee, by virtue of this act, at such rate as may be agreed upon at the time of its acceptance of any such appointment, or as shall be provided by the order of the Court.

(g) **Deposit With State Treasurer.**—Each trust company, before accepting any such appointment or deposit, shall deposit with the Treasurer of State, for the benefit of the creditors of said trust company, the sum of one hundred thousand dollars (\$100,000), in bonds of the United States, or municipal bonds of this State, or of any county, or city, city and county, or school district thereof, or in mortgages on improved and productive real estate in this State, being first liens thereon, and the real estate being worth at least twice the amount loaned thereon; said bonds or mortgages to be approved by the superintendent of banks. The bonds and securities so deposited may be exchanged from time to time for other securities, receivable as aforesaid. Said bonds of the United States, or municipal bonds of this State, or of any county, city, city and county, or school district thereof, and all said securities shall be subject to sale and transfer, and to the disposal of the proceeds by said Treasurer, only on the order of a court of competent jurisdiction and as hereinafter provided. The Treasurer shall give his receipt for the securities deposited, and the State shall be responsible for the safe return of such securities.

Act of the Legislature, approved April 21, 1911.

(h) **Mortgage of Realty to State Treasurer.**—Any such trust company, having a paid-up capital in excess of two hundred thousand dollars, may be permitted by the superintendent of banks to mortgage any improved and productive real estate owned by it, in excess of said

amount, to the Treasurer of State, for such sum as the said superintendent of banks may determine, and such mortgage may be deposited with said Treasurer, and when so deposited it shall be included in the amount of securities hereinabove required to be deposited with said Treasurer for the benefit of the creditors of said trust company.

(i) **Interest on State Deposits.**—So long as the trust company so depositing shall continue solvent, it shall be permitted to receive from said Treasurer the interest or dividends on said deposits, and whenever any trust company receives trust funds as such trustee in excess of five hundred thousand dollars, it shall deposit with the State Treasurer securities mentioned in this act, to be approved by the superintendent of banks, in the amount of another one hundred thousand dollars, and for each five hundred thousand dollars of such trust funds thereafter received, an additional deposit of fifty thousand dollars of such securities likewise approved shall be made with the said State Treasurer; provided, however, that no trust company shall be required to deposit more than one million dollars of such securities.

The State shall be responsible for the safe return of such securities deposited with the Treasurer of the State under this section.

Act of the Legislature, approved March 1, 1909.

(j) **Abstracts of Title.**—When any part of such deposit with the State Treasurer is made in bonds and mortgages, it shall be accompanied by full abstracts of titles and searches, or by certificates of title issued by a person, company or corporation, whose business or objects are to make searches of titles and issue certificates of titles, and which said person, company or corporation shall be one designated or approved by said superintendent of banks, and shall be examined and approved by or under the direction of the said superintendent of banks. The fees for an examination of title by counsel to be paid by the trust company making

the deposit, shall not exceed twenty dollars for each mortgage, and the fee for each appraiser, not exceeding two, besides expenses, shall be five dollars for each mortgage.

Act of the Legislature, approved March 1, 1909.

(k) **Paid-up Capital Required.**—Before the superintendent of banks issues his certificate to any trust company, there must be filed in his office the affidavit of a majority of its board of directors or the persons named in said articles as the first directors of the corporation that at least two hundred thousand dollars of the capital stock has actually been subscribed and paid in to a person named in such affidavit for the benefit of the corporation.

(l) **Report of Trusts Held.**—On making the report required by the terms of this act, every trust company shall, in addition to the other facts to be reported on, furnish a list and brief description of the trusts held by such corporation, the source of the appointment thereto, and the amount of real and personal estate held by such trust company by virtue thereof; except that mere mortgage trusts, wherein no action has been taken by such corporation, shall not be included in such statement.

(m) **Retirement From Business.**—Any trust company which desires to retire from business under this act, shall furnish to the superintendent of banks satisfactory evidence of its release and discharge from all the obligations and trusts hereinbefore provided for; whereupon he shall revoke his certificate to such trust company, and thereupon the Treasurer of State shall return to said trust company all its securities.

Act of the Legislature, approved March 1, 1909.

(n) **Confidential Communications.**—Except as otherwise provided, any trust company exercising the powers and performing the duties provided for in this act, shall keep inviolate all communications confidentially made to it touching the existence, condition, management and administration of any trusts confided to it; and no creditor or stockholder

of any such trust company shall be entitled to disclosure of any such communication; provided, however, that the president, manager and secretary of such trust company shall be entitled to knowledge of such communication; and provided, further, that in any suit or proceeding touching the existence, condition, management or administration of such trust, the Court wherein the same is pending may require disclosure of any such communication.

Act of the Legislature, approved March 1, 1909.

(o) **Use of Word "Trust."**—The use of the word "trust" in combination with or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization," or "syndicate," is hereby prohibited to all persons, firms, associations, companies or corporations other than corporations provided for by this act. Every person, firm, association, company or corporation which uses the word "trust" in combination with or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization," or "syndicate," as the name under which business is done or transacted, shall be subject to the provisions of this act and to the supervision of the superintendent of banks. Any person, firm, association, company, or corporation making use of the word "trust" in combination or in connection with the word "company," "corporation," "incorporation," "association," "society," "organization," or "syndicate," in the manner hereinabove mentioned, in the transaction of business, and not subject to the provisions of this act and the supervision of the superintendent of banks, shall be guilty of a misdemeanor.

No corporation hereafter formed shall use the word "trust" or "trustee" as a part of its corporate name unless it shall be authorized by its articles of incorporation to act as executor, administrator, guardian, assignee, receiver, depository or trustee; nor shall any corporation hereafter formed accept or execute any trust mentioned in this act, unless it shall have complied with the provisions of this act.

Act of the Legislature, approved March 1, 1909.

(p) **Investment of Capital and Trust Funds.**—Every trust company shall invest its capital and trust funds received by it in accordance with the laws relative to the investment of funds deposited with savings banks, unless a specific agreement to the contrary is made between the trust company and the party creating the trust.

(q) **Requirements for Doing Banking Business.**—Every trust company desiring to do or doing a commercial banking business or a savings bank business, or both, in addition to its trust business, shall have paid up in cash the capital as provided in this act. Such capital for each such department shall be increased from time to time in the same manner and to the same extent as though such bank were conducting separate banks instead of separate departments.

Every trust company doing a departmental business shall comply with the provisions of this act governing each of such departments as to its deposits, reserves, investments, and loans.

Act of the Legislature, approved March 1, 1909.

Section 931.—STATE BANKING DEPARTMENT.—A State banking department has been created by the law. A superintendent of banks is appointed by the Governor. All banks are subject to his inspection. No bank shall transact any business in this State without the written approval of the superintendent of banks. *

(a) **Examiner Must Not be Indebted to Bank.**—No superintendent of banks, chief deputy, or bank examiner, shall be or shall become indebted, directly or indirectly, either as borrower, endorser, surety, or guarantor, to any bank under his supervision or subject to his examination.

Act of the Legislature, approved April 21, 1911.

(b) **Doubtful Securities.**—When a bank shall have been examined by any examiner, and he finds securities therein which are, in his judgment, of doubtful value, he shall report the same to the superintendent of banks, who thereupon shall

be authorized to employ appraisers at the expense of such bank to appraise said securities, at a compensation to be fixed by the superintendent of banks.

Act of the Legislature, approved April 21, 1911.

(c) **Impairment of Capital.**—Whenever the superintendent of banks shall have reason to believe that the capital of any bank is reduced by impairment or otherwise below the amount required by law or by its articles of incorporation, he shall require such bank to make good the deficiency within sixty days after the date of such requisition. He shall examine or cause to be examined any such bank to ascertain the amount of such impairment or reduction of capital and whether the deficiency has been made good as required by him.

Act of the Legislature, approved April 21, 1911.

(d) **Certificate Required for Transaction of Business.**—No bank shall transact any business in this state without the written approval of the superintendent of banks, and without his written certificate stating that it has complied with the provisions of this act, and with all the requirements of law, and that it is authorized to transact, within this state, the business specified therein, and that the requisite capital has been in good faith subscribed and paid up in cash, or, if organized without capital stock, that it has accumulated the requisite surplus or reserve fund. Before issuing such certificate the superintendent of banks shall examine, or cause an examination to be made, in order to ascertain whether the requisite capital of such bank has been paid up in cash or the requisite reserve or surplus fund has been accumulated. The superintendent of banks shall not authorize such bank to commence business until it appears from such examination, or other evidence satisfactory to him, that the requisite capital has been, in good faith, subscribed and paid in in cash, or that the requisite surplus or reserve fund has been accumulated or paid in in cash, and until such bank shall

have paid a fee of fifty dollars. Every person who neglects to comply with any requirement of this section shall be guilty of a misdemeanor.

When the articles of incorporation shall have been filed with the secretary of state, and application made for the issuance of a certificate to do business as a bank, the superintendent of banks shall ascertain, from the best sources of information at his command, whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located, and, if so satisfied, he shall, within sixty days after such application has been made to him, issue, under his hand and official seal, the certificate of authorization required by this act. The superintendent of banks shall transmit such certificate of authorization to the county clerk of such county, who shall file the same; the superintendent of banks shall also file a duplicate of such certificate in his own office.

Act of the Legislature, approved March 1, 1909.

(e) **Bank Reports.**—Every bank doing a departmental business shall render to the superintendent of banks for each department conducted by it, a separate report showing in detail the actual financial condition of such department, and shall at the time of furnishing said report separately publish the statement for each department as provided in this act.

Every bank doing business in this state shall, whenever required by the superintendent of banks, make a report in writing to him, verified by the oath of its president and its secretary or cashier, or two principal officers. Such reports shall show the actual financial condition of the bank making the report, at the close of any past day specified by the superintendent, and shall specify the following:

1. The amount of its capital stock and the number of shares into which it is divided, or, if not incorporated, the amount of capital actually paid in, and by whom.

2. The names of the directors and the number of shares of stock held by each, or, if not incorporated, the names of each member of the firm and the amount of capital paid in by each.

3. The total amount of capital actually paid up in money, and the total amount of contingent and other reserve funds, if any.

4. The total amount due the depositors.

5. The total amount and character of any other liabilities it may have.

6. The amount at which the lot and building occupied by the bank for the transaction of its regular business stands debited on its books, together with the market value of all other real estate held, whether acquired in settlement of loans or otherwise; the amount at which it stands debited on the bank books, in what counties situated, and in what name the title is vested, if not in the name of the bank itself.

7. The amount loaned on real estate, specifying the amount secured on real estate in each county separately; also specifying the name of the person in whose name the property is held in trust or as security, in case it is held in any name other than that of the bank and the instrument creating the security does not itself disclose the name of the bank.

8. The amount invested in bonds, designating the name and amount of each particular kind.

9. The amount loaned on stocks and bonds, designating each particular class and the amount thereof.

10. The amount of money loaned on other securities, with a particular designation of each class and the amount loaned on each.

11. The actual amount of money on hand or deposited in any other bank or place, with the name of the place where deposited and the amount in each place.

12. Any other property held, or any amount of money loaned, deposited, invested or placed, not otherwise herein enumerated, and the place where situate and the value of said

property, and the amount so loaned, deposited or placed, and any other information he may request relative to the conduct and affairs of such bank.

The oaths of the officers and the statements above required shall state that they and each of them have a personal knowledge of the matters therein contained, and that they believe every allegation, statement, matter, and thing therein contained is true. Any wilful false statement in the premises shall be perjury and shall be punished as such.

The superintendent of banks shall call for reports specified by the previous section, at least three times, each year, and shall call for such reports as near as possible upon the same days as those designated by the comptroller of the currency of the United States for reports of national banking associations.

Act of the Legislature, approved March 1, 1909.

(f) **Publication of Statement.**—At the time of furnishing such report to the superintendent of banks, every bank shall also publish a condensed statement of its financial condition, at least once, in some newspaper of general circulation, published in the city or town where its principal place of business is located, and, if no paper is published in such town, then in some newspaper of general circulation in the county where its principal place of business is located. Such published statement shall show the total amount of loans, the total amount of overdrafts, the total amount invested in bonds and other securities, the total amount due from banks, the total amount of checks and other cash items, the total amount of cash on hand, capital paid in, surplus funds; undivided profits, less expenses and taxes paid; due to other banks and bankers, due to trust companies and savings banks; individual deposits subject to checks; demand certificates of deposit; time deposits; certified checks; cashier's checks outstanding; and such other items as will show the actual financial condition of the bank making the report.

Act of the Legislature, approved March 1, 1909.

(g) **Conduct of Business in Unsafe Manner.**—If it shall appear to the superintendent of banks that any bank has violated its articles of incorporation, or any law binding upon it, he must, by an order under his hand and official seal, which seal must be adopted by him, addressed to such bank, direct the discontinuance of such violation; or, if it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, he must in like manner direct the discontinuance of such unsafe or injurious practices. Such order shall require such bank to show cause, before the superintendent of banks, at a time and place to be fixed by him, why said order should not be observed. If upon such hearing it shall appear to the superintendent of banks that such bank is conducting business in an unsafe or injurious manner, or is violating its articles of incorporation, or any law of this state, then the superintendent of banks shall make such order of discontinuance final, and such bank shall immediately discontinue all practices named in such order by the superintendent of banks. Such bank shall have ten days after any such order is made final in which suit may be commenced to restrain enforcement of such order, and unless such action be so commenced and enforcement of said order be enjoined within ten days, by the court in which such suit is brought, then such bank shall comply with such order; and, in the event of its failure so to do, then the superintendent of banks shall have power to take immediate charge and control of said bank, and liquidate its affairs in the manner provided in this act for the liquidation of banks.

Act of the Legislature, approved March 1, 1909.

(h) **When Superintendent May Take Possession of Bank.**—Whenever the superintendent of banks shall have reason to conclude that any bank is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe or inexpedient for it to continue business, the superintendent of banks may forthwith take possession

of the property and business of such bank, and retain such possession until such bank shall resume business, or its affairs be finally liquidated, as herein provided.

On taking possession of the property and business of any such bank, the superintendent of banks shall forthwith give notice in writing of such fact to any and all corporations and individuals holding or in possession of any of the assets of such bank.

No bank, corporation or individual, knowing of such taking possession by the superintendent of banks, or notified as aforesaid, shall have a lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred against any of the assets of the bank of whose property and business the superintendent of banks shall have taken possession as aforesaid. Such bank may, with the consent of the superintendent of banks, resume business upon such conditions as may be approved by him.

Upon taking possession of the property and business of such bank, the superintendent of banks is authorized to collect moneys due to such bank, and to do such other acts as are necessary to conserve its assets and business, and shall proceed to liquidate the affairs thereof as hereinafter provided.

The superintendent of banks shall collect all debts due and claims belonging to it, and upon the order of the superior court may sell or compound all bad or doubtful debts, and on like order may sell all real and personal property of such bank on such terms as the court shall direct; and may, if necessary to pay the debts of such bank, enforce individual liability of the stockholders by action to be brought within three years after the date of his taking possession of the affairs of such bank.

The superintendent of banks may, under his hand and official seal, appoint one or more special deputy superintendents of banks, as agent or agents, to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the superintendent of

banks, and a certified copy in the office of the clerk of the county in which the principal office of such bank is located.

The superintendent of banks may, from time to time, authorize a special deputy superintendent to perform such duties connected with such liquidations and distribution as the superintendent of banks may deem proper. The superintendent of banks may employ such counsel, and procure such expert assistance and advice as may be necessary in the liquidation and distribution of the assets of such bank, and may retain such officers or employees of such bank as he may deem necessary. The superintendent of banks shall require, from a special deputy superintendent and from such assistants, such security for the faithful discharge of their duties as he may deem proper.

The superintendent of banks shall cause notice to be given by advertisement in such newspapers as he may direct, weekly, for three consecutive months, calling on all persons who may have claims against such bank, to present the same to the superintendent of banks, and make legal proof thereof, at a place and within a time not more than six months after the last day of publication, to be therein specified.

The superintendent of banks shall mail a copy of such notice to all persons whose names appear as creditors upon the books of the bank. If the superintendent of banks doubts the justice and validity of any claim, he may reject the same and serve notice of such rejection upon the claimant, either by mail or personally. An affidavit of the service of such notice shall be prima facie evidence thereof, and shall be filed with the superintendent of banks. An action upon a claim so rejected must be brought within six months after such service. Claims presented after the expiration of the time fixed in the notice to creditors shall be entitled to share ratably in the distribution to the extent of the assets in the hands of the superintendent of banks, equitably applicable thereto.

Upon taking possession of the property and assets of such bank, the superintendent of banks shall make an inventory of the assets of such bank in duplicate, one to be filed in

the office of the superintendent of banks, and one in the office of the clerk of the county in which the principal office of such bank is located; upon the expiration of the time fixed for the presentation of claims, the superintendent of banks shall make in duplicate a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, one to be filed in the office of the superintendent of banks, and one in the office of the clerk of the county in which the principal office of such bank is located; such inventory and list of claims shall be open at all reasonable times for inspection.

The compensation of the special deputy superintendents, counsel, and other officers and assistants, and all expenses of supervision and liquidation, shall be fixed by the superintendent of banks on notice to such bank, and shall upon his certificate be paid out of the funds of such bank in his hands.

The sums collected by the superintendent of banks shall, from time to time, be deposited in one or more banks in this state, subject to examination by the superintendent of banks.

At any time after the expiration of the date fixed for the presentation of claims, the superintendent of banks may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends, and after the expiration of one year from the date of first publication of notice to creditors he may declare a final dividend.

Objection to any claim not rejected by the superintendent of banks may be made by any party interested, by filing a copy of such objection with the superintendent of banks, who shall present the same to the superior court of the county in which such bank has its principal place of business, with a petition that said court pass upon the validity of such claims; and such court shall thereupon, upon such notice to the party presenting the same, and to the superintendent of banks, as the court may deem proper, accept or reject said claim, and the superintendent of banks shall observe the order of the court in that regard; provided,

however, that should the claim be rejected, such rejection shall not conclude the claimant from bringing an action upon such claim within six months after such rejection.

Upon the petition of the superintendent of banks, such court may make proper provisions for unclaimed deposits.

Whenever any such bank, of whose property and business the superintendent of banks has taken possession as aforesaid, deems itself aggrieved thereby, it may at any time within ten days after such taking possession, and not thereafter, apply to the superior court in the county in which the principal office of such bank is located, to enjoin further proceedings; and said court, after citing the superintendent of banks to show cause why further proceedings should not be enjoined, and upon hearing the allegations and proofs of the parties, and determining the facts, may, upon the merits, dismiss such application, or enjoin the superintendent of banks from further proceedings, and direct him to surrender such business and property to such bank.

Either party aggrieved by the judgment rendered thereon may appeal therefrom to the supreme court, as in other cases of appeal thereto from the judgment of a superior court.

An appeal as above provided shall operate as a stay of the judgment of the superior court, and no bond need be given if the appeal be taken by the superintendent of banks; but if the appeal be taken by such bank, a bond shall be given, as required by section nine hundred and forty-three of the Code of Civil Procedure.

Whenever the superintendent of banks shall have paid to each and every depositor and creditor of such corporation (not including stockholders) whose claim or claims as such creditor or depositor shall have been duly approved and allowed, the full amount of such claim, and shall have made proper provisions for unclaimed and unpaid deposits or dividends, and shall have paid all expenses of the liquidation, the superintendent of banks shall call a meeting of the stockholders of such corporation by giving notice thereof

for thirty days, in one or more newspapers published in the county where the principal office of such corporation is located. At such meeting, the superintendent of banks shall appear and deliver to the stockholders all the property, effects and records of such bank, and upon such transfer and delivery he shall be discharged from any and all further liability to such bank and its creditors. And thereupon the bank shall be in the same position as though it had never been authorized to transact a banking business, and such bank, by fulfilling the requirements of this act, and of the superintendent of banks, can thereafter be authorized to resume the conduct of its business as a bank.

Act of the Legislature, approved March 1, 1909.

The money may be drawn out on the warrants of the state controller, issued on proofs of ownership, approved and allowed by the state board of examiners.

All moneys paid into the said fund, uncalled for within five years after being paid in, shall by operation of law, and without action had, escheat to the state, and thereafter only be drawn out in such manner as now provided for by law for the estates of deceased persons escheated to this state.

The state board of examiners must invest such moneys in the same manner that the state school land fund is invested as provided by law. But any claimant shall be entitled to recover as herein provided only the principal so paid into the state treasury.

(i) **Failure to Make Reports.**—If any bank shall fail to make the report required by law or by the superintendent of banks, within ten days from the day designated for the making thereof, or to include therein any matter required by law or by the superintendent of banks, every such delinquent bank shall forfeit to the people of the state the sum of one hundred dollars for each day that such report shall be delayed or withheld, and for every day it shall fail to report any such omitted matter. In the event of the failure of any such bank to make the report required from

it by law, or by the superintendent of banks, he shall immediately cause the books, papers and affairs of such bank to be thoroughly examined.

(j) **Report of Directors.**—It shall be the duty of the board of directors of every bank to examine fully into the books, papers and affairs of the bank of which they are directors, and particularly into the loans and discounts thereof, with a special view to ascertaining the value and security thereof, and of the collateral security, if any given, in connection therewith, and into such other matters as the superintendent of banks may require; such examination to be made at least once a year, but no such subsequent yearly examinations shall be made within three months of the next preceding examination. Such directors shall have power to employ such assistance in making such examination as they may deem necessary. Within ten days after the completion of such examination, a report in writing thereof, sworn to by the directors making the same, shall be made by the board of directors of such bank, and placed on file with the records of said bank, and shall be subject to examination by the superintendent of banks.

Such report shall particularly contain a statement of the assets and liabilities of the bank examined, as shown by its books, together with any deductions from the assets, or additions to liabilities, which such directors or committee, after such examination, may determine to make. It shall also contain a statement, in detail, of loans, if any, which in their opinion are worthless or doubtful, together with their reasons for so regarding them; also a statement of loans made on collateral security, which in their opinion are insufficiently secured, giving in each case the amount of the loan, the name and market value of the collateral, if it has any market value, and, if not, a statement of that fact, and its actual value as nearly as possible. Such report shall also contain a statement of overdrafts, of the names and amounts of such as they consider worthless or doubtful, and a full statement of such other matters as affect the

solvency and soundness of the bank. If the directors of such bank shall fail to make, or cause to be made, and file such report of examination in the manner and within the time specified, the directors of such bank shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1909.

Section 932.—PAR VALUE OF CAPITAL STOCK.

—The capital stock of any bank having a capital stock, shall have a par value of at least one hundred dollars and the paid up value shall be endorsed on the face of each certificate issued, which paid up value shall be the same on all certificates issued. No bank shall have preferred stock.

Act of the Legislature, approved April 21, 1911.

Section 933.—LIEN OF BANK.—A bank has a general lien, dependent on possession, upon all property in its hands belonging to a customer, for the balance due the bank from such customer in the course of their business together.

Civil Code, Section 3053.

Section 934.—DEPOSIT OF STATE MONEY.—All moneys under the control of the state treasurer, belonging to the state, may be deposited by the state treasurer to the credit of the state in such state or national bank, or banks, in the state as the treasurer, with the approval of the governor and state controller, shall select for the safe-keeping of such deposits, and any sum so deposited shall be deemed to be in the state treasury; provided that the bank or banks in which such money is deposited shall furnish security as hereinafter provided; and provided further, that such depositary bank or banks be selected from those agreeing to pay the highest rate of interest, not less than two per cent per annum, for such deposits, as may be determined by bids to be submitted at such times and in such manner as the treasurer, with the approval of the governor and the state controller shall direct; provided, that not more than one-tenth

of the aggregate amount of state moneys available for deposit and on deposit shall be deposited in any one bank; and provided, further, that such deposit shall not exceed fifty per cent of the paid-up capital, exclusive of reserve and surplus, of any depositary bank. Any and all bids may be rejected by the treasurer, with the approval of the governor and state controller, and new bids asked for. The expense of transportation of moneys to and from the state treasury to such depositaries shall be borne by such depositaries. Said deposits, with interest thereon, shall be subject to withdrawal at any time upon the demand of the state treasurer, unless the treasurer, with the consent of the governor and controller, shall deposit any part of such moneys upon different terms; provided that no agreement for the deposit of said money shall be for a longer period than one year.

For the security of the funds deposited by the state treasurer under the provisions of this act, there shall be deposited with the treasurer bonds of the United States, or of this state, or of any county, municipality or school district within this state, which bonds shall be approved by the governor, controller and treasurer, to an amount in value at least ten per cent in excess of the amount of the deposit with such bank or banks; and if, in any case, or at any time, such bonds are not deemed satisfactory security to the governor, controller and treasurer, they may require such additional security as may be satisfactory to them. Said bonds, or any part thereof, may be withdrawn on the written consent of the governor, controller and treasurer, provided that a sufficient amount of said bonds to secure said deposits shall always be kept in the treasury; and in the event that said bank or banks of deposit shall fail to pay such deposits or any part thereof on the demand of the state treasurer, then it shall be the duty of the state treasurer to forthwith convert said bonds into money and to disburse the same according to law.

At the time of depositing state moneys in any bank, designated as a depositary, the state treasurer shall take and preserve a receipt therefor, stating the amount deposited and referring to the contract made between the depositary banks and the

treasurer. The moneys so deposited may be drawn out by the check or order of the state treasurer.

Act of the Legislature, approved March 24, 1911.

Section 935.—DEPOSIT OF COUNTY OR CITY MONEY.—County or city moneys may be deposited in banks by the public officer having the legal custody of such funds. When such funds are so deposited, the bank must furnish as security bonds of the United States, or bonds of California, or bonds of any county, municipality, or school district within this state, which must be approved by the officer making the deposit and the district attorney of a county or city attorney of a city. The market value of the bonds furnished as security must be at least ten per cent in excess of the amount of the deposit; provided, the amount of the deposit cannot in any case exceed the face value of the bonds. The bank receiving such deposit must pay a reasonable amount of interest, which must not be less than two per cent per annum on the daily balances deposited. The rate of interest must be fixed annually in the month of January, in the case of counties by the treasurer, auditor and chairman of the board of supervisors, or in the case of cities by the treasurer, auditor (or clerk in cities having no auditor), and chairman of the council or other governing body of the municipality. Interest on deposits must be paid quarterly. Deposits are subject to withdrawal at any time on demand. The bank may also return deposits at any time. The total amount deposited in any bank cannot at any one time exceed fifty per cent of its capital stock. No officer can have on deposit at any one time more than ten per cent of the public moneys under his control, and available for deposit, in any bank, while there are other qualified banks requesting deposits. Money must be deposited in banks within the county or city, and no officer can be required to deposit money in outside banks.

Act of the Legislature, approved March 23, 1907.

Section 936.—NATIONAL BANK CANNOT DEAL IN STOCKS.—A national bank has no power to deal in stocks of another corporation; and it cannot purchase or subscribe for the stock of another corporation. As incidental to the power to loan money on personal security, however, a national bank may, in the usual course of doing such business, accept stock of another corporation as collateral; and by the enforcement of its rights as pledgee it may become the owner of the collateral; but it cannot, in the ordinary course of business, buy or sell stocks of another corporation. (Decided by the Supreme Court in the case of *Chemical National Bank vs. Havermale*, which decision is printed in Volume 120 of the California Reports, page 53.)

Section 937.—TAKING OF STOCK IN SATISFACTION OF PLEDGE.—While a bank organized under the act of congress as a national bank is not given the power to deal in stocks or bonds, such bank may take title to stocks or bonds in compromise of a disputed or doubtful claim, or take them in pledge, or purchase them with a view to protecting or satisfying a claim secured by such pledge.

Prompt Resale.—Where a national bank buys stock pledged to it, it should dispose of such stock as soon as a sale can, to proper advantage, be made. (Decided by the Supreme Court of California, in the case of *McBoyle vs. Union National Bank*, which decision is printed in Vol 42, California Decisions, page 499.)

PART VIII.

MINES AND MINING.

Section 938.—UNITED STATES LAWS.—The laws of the United States govern the subject of mines and mining, and provide the manner in which locations shall be made, how a mining claim can be held, and the particular lands upon which a mining location may be placed. The laws of the United States also direct and control the rights and liabilities of miners in relation to each other. The laws of the United States are paramount on all these matters.

Section 939.—STATE LAWS.—While, as has been said, the laws of the United States are paramount, yet the State of California has power, through its Legislature, to pass mining laws, providing for the health and safety of those engaged in mining, or employed in and about mining works; and to pass mining laws regulating locations, and other matters, provided such laws are not in conflict with the laws of the United States.

Section 940.—LOCAL RULES AND CUSTOMS.—The miners of any mining district in the State may adopt local rules and establish local customs in relation to the acquisition, holding, and working of claims within such district; and such rules and customs, when proved, have the force of law, provided they do not conflict with the laws of the United States or of the State of California. These local rules and customs usually deal with the posting and recording of location notices, and sometimes regulate the size of a claim, and the number of claims which any person may locate, in the district; and while they cannot extend

or enlarge the rights conferred by the laws of the United States or of the State, they can and frequently do restrict them.

Section 941.—WHO MAY LOCATE A MINING CLAIM.—Only those who are citizens of the United States, or who have declared their intention to become such, are allowed by the law to make a location of mineral lands in California.

Revised Statutes of the United States, Section 2319.
Act of the Legislature, approved March 13, 1909.

Section 942.—UPON WHAT LAND MINING CLAIM MAY BE LOCATED.—Only unoccupied, unclaimed public mineral lands are locatable as a mining claim. The land must be public land, that is, it must be land the title to which is in the United States, and which is open to entry. Therefore, if it is land which has been expressly reserved by law, or if it is occupied as an Indian Reservation, it is not open to entry as mineral land. It must be unoccupied and unclaimed; that is, it cannot be located upon if there is already a claimant in good faith occupying the land. But this does not mean every occupancy of any character, a mere possession without right. The occupation and claim to the land, in order to be a bar to location by another, must be in good faith and in compliance with the law of the United States. And, lastly, it must be mineral land. The test of the character of the land is, whether it is more valuable for minerals than for agricultural purposes. If the land contains mineral in its natural state, it is mineral land, and may be located upon as a mining claim.

Section 943.—VALUABLE MINERAL DEPOSIT.—In order to constitute a valuable mineral deposit within the meaning of the federal laws, there must be minerals in such quantity as to justify the expenditure of effort to extract them. It is not necessary, however, that mineral of sufficient amount and value to allow immediate profitable working be

shown to exist in the land, a present or prospective commercial value being enough. (Decided by the Supreme Court of California, in the case of *Madison vs. Octave Oil Company*, which decision is printed in Volume 37, California Decisions, page 29.)

Section 944.—WHAT IS MINING.—Mining is defined to be digging and searching for precious and economic metals and minerals, whether by shafts, pits, and tunnels, or by placer or hydraulic gravel mining; and the term includes the mining of coal, iron, phosphate, and hydrocarbons, and the boring for oil and gas, as well as prospecting for any of those metals or minerals.

Section 945.—WHAT CONSTITUTES A VALID LOCATION.—To constitute a valid location of a mining claim, three things are always essential. There must be, first, discovery of the mineral; second, posting and recording of notice; third, marking the location on the ground so that the boundaries can be readily traced.

In all legislation, whether of congress or of a state or territory, and by all mining regulations and rules, discovery and appropriation are recognized as the source of title to mining claims, and development by working as the condition of continued ownership until a patent is obtained.

(a) **Appropriation.**—"Appropriation" is ordinarily effected by first posting the notice of location at or near the point where the ledge is exposed, then recording the notice, and thereafter marking the boundaries.

(b) **Performance of Essential Acts.**—When every act necessary to complete a location has been done before an adverse claim has accrued, the order in which such acts have been performed is immaterial.

(c) **Marking of Boundaries Main Act.**—The marking of the location upon the ground so that the boundaries may be readily traced, is the main act of original location.

(d) **Posting of Notice.**—There is nothing in the statute requiring the posting of the notice on the day of discovery, or prescribing where it shall be posted on the claim or at all.

(e) **Completion of Location.**—The discovery is the source of title and vests the discoverer with the prior right to complete his location, which he can only lose by a failure within a reasonable time to mark his location so that the boundaries can be traced upon the ground.

(f) **Prior Posting Unnecessary to Prior Discovery.**—Prior discovery is not required to be accompanied by a prior posting of notice in order to vest the claimant with the prior right to complete his location.

The mining law of the United States does not require the notice of location to be posted or recorded.

(Decided by the Court of Appeals of California, in the case of *McCleary vs. W. D. Broaddus*, which decision is printed in Volume 11 of California Appellate Decisions, page 146.)

Section 946.—THE DISCOVERY.—If it is a lode claim, there must be an actual discovery of mineral. If a person should attempt to take a lode claim on land which he had not prospected, and knew nothing about, it would not be a valid location. Good faith is required by the law. And no location of a claim can be made until the discovery of the vein or lode within the limits of the claim located. To “discover” a quartz claim, means the actual finding of mineral-bearing rock in place, the discovery of mineral-bearing ore within the crevices of the rock, or incased within defined boundaries; or, the discovery of such indications of the presence of ore within rock in place, as an experienced miner would feel justified in spending his time and money upon with the reasonable expectation of finding ore in paying quantities. When a locator finds rock in place containing mineral, he has made a discovery within the meaning of the law, whether the earth or rock is rich or poor, whether it assays high or low. It is the finding of the

mineral in the rock in place, as distinguished from float rock, that constitutes the discovery, and warrants the prospector in making a location of a mining claim. The claimant should, therefore, prior to locating his claim, unless the vein can be traced upon the surface, sink a shaft or run a tunnel or drift to a sufficient depth to discover and develop a mineral-bearing vein, lode, or crevice. He should also determine, if possible, the general course of the vein in either direction from the point of discovery, by which direction he will be governed in making the boundaries of his claim on the surface. What has been said on the subject of discovery applies only to lode or quartz claims. The law does not specify any actual discovery of mineral as an essential to the location of a placer claim, and it has been held in California that a location of a placer claim may be made without discovery of minerals being first made on the ground. But no patent could be obtained for a placer claim without proof of the mineral character of the claim.

Section 947.—MARKING THE BOUNDARIES.—

The boundaries must be marked in such a way that the claim can be identified on the ground. The locator should drive a post or erect a monument of stones at each corner of his surface ground; and at the point of discovery, or discovery shaft, he should fix a post, stake, or board, on which should be designated the name of the lode, the name or names of the locators, and the number of feet claimed and in which direction from the point of discovery.

Section 948.—LOCATION NOTICE.—A notice of location must be posted on the claim, at the point of discovery, or discovery shaft.

Section 949.—FORM OF NOTICE OF LOCATION OF LODE CLAIM.—The following is a form of location of lode claim:—

Location Notice.

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN: That....., a citizen of the United States, having discovered a lode or vein of quartz, or rock in place, bearing..... (here insert kind of mineral discovered), within the limits of the claim hereby located, has this day, under and in accordance with the Revised Statutes of the United States, Chapter VII, Title 32, located..... (here state number of feet) linear feet of this vein or lode, with surface ground..... (here state number of feet) feet in width, situated in..... mining district, County of....., State of California, and known as..... (here state name of mine), extending..... feet to a..... (here describe natural object or monument), and..... feet..... to..... (here describe natural object or monument) from this notice at the discovery or prospect shaft, the exterior boundaries of this claim being distinctly marked by reference to some natural object or permanent monument, and more particularly described as follows. to-wit:
 (Here insert description.)

.....

 and I intend to hold and work said claim as provided by the local customs and local rules of miners, and the mining Statutes of the United States.

.....
 Dated on the ground, the..... day of....., 191..
 Discovered....., 191..
, locator.
 Recorded....., 191..

Section 950.—FORM OF NOTICE OF LOCATION OF A PLACER CLAIM.—The following is a form of notice of location of a placer claim:—

Location Notice.

NOTICE IS HEREBY GIVEN TO ALL WHOM IT MAY CONCERN: That....., a citizen of the United States, has this day located, in accordance

with the Revised Statutes of the United States, Chapter VI, Title 32, the following described placer mining ground, to-wit:

(Description: If on surveyed land, describe the legal subdivision. If on unsurveyed land, describe as accurately as possible by courses and distances.)

Situated in.....mining district, County of....., State of California. This claim shall be known as..... (here insert name of claim) mining claim, and I intend to work the same in accordance with the local customs and rules of miners, and the mining Statutes of the United States.

Dated on the ground the.....day of....., 191...

Located....., 191..

Recorded....., 191..

Section 951.—RECORDING LOCATION NOTICE.—

The Congress of the United States has provided by law that "the location notice must be filed for record in all respects as required by the State laws and local rules and regulations, if there be any." The State of California, by an Act of the Legislature, has provided that notices of location of mining claims must be recorded in the Recorder's office of the county where the mining claim is situated, within thirty days after the posting of notice of location. This applies to lode, placer, and tunnel claims.

Civil Code of California, Section 1159.

Act of the Legislature, approved March 13, 1909.

Section 952.—SIZE OF LODGE CLAIM.—Any person who is a citizen of the United States, or who has declared his intention to become a citizen, may locate, record, and hold a mining claim of fifteen hundred linear feet along the course of any mineral vein or lode subject to location; or an association of persons, who are citizens of the United States, may make a joint location of fifteen hundred feet

along the course of the lode or vein. The claim, according to the law, is not to exceed fifteen hundred feet in length. As to width, the law provides that the lateral extent of locations on veins or lodes shall in no case exceed three hundred feet on each side of the middle of the vein at the surface. Thus the extreme size of a lode claim is fifteen hundred feet in length by six hundred feet in width. But the law also gives mining districts the right to reduce the width of a mining claim to less than six hundred feet, but not less than fifty feet. The laws referred to are the laws of the United States. The State of California has no law of its own upon the subject. When the locator does not determine by survey or exploration where the middle of his vein at the surface is, his discovery shaft is taken to mark the middle of the vein.

Where the vein runs in one direction, the location must follow the direction of the vein, and the locator cannot stake his claim crosswise of the vein and expect to hold the full amount allowed by law as the size of a lode claim. Where the vein within a mining claim ran in a northerly and southerly direction, and the location was crosswise of the vein, it was held by the Court of Appeals that the side-lines were really end-lines, considering the direction of the lode on the surface; and that the rights of the locators must be confined to the area within the side-lines three hundred feet on each side of the vein or lode. (Decided by the California Court of Appeals, in the case of Southern California Ry. Co. vs. O'Donnell, which decision is printed in Volume 85 of the Pacific Reporter (advance sheets), page 932.)

Revised Statutes of the United States, Section 2320.

Section 953.—SIZE OF PLACER CLAIM.—An individual may locate twenty acres as a placer claim. Two persons may associate themselves together and locate forty acres as a placer claim; and so on up to eight persons, who may locate one hundred and sixty acres as a placer claim. But no individual can locate more than twenty acres, and

no association of persons can locate more than one hundred and sixty acres.

Revised Statutes of the United States, Sections 2330, 2331.

Section 954.—DISCOVERY ON PLACER GROUND.

—It has already been stated that there must be a valid discovery of minerals, before the location can have any legal effect, and that the discovery of a quartz claim must be of a lode or vein in rock in place. But when we come to consider a placer claim, the rule stated does not apply. The term “placer” is of wide significance. It includes any form of mineral deposit, except quartz or other rock in place. All forms of mineral and metal bearing earth, other than veins or lodes in rock in place, are held to be “placer.” They cannot be fixed in place, confined within walls of rock, for they may be found in shifting sand, or loose gravel, or in the channels of rivers; and the term “placer” includes natural gas, petroleum, and hydrocarbons. But while a valid location may be made under the laws relating to placer locations without a previous discovery of mineral, yet such discovery must be made before a patent from the United States Government can be issued under the Acts of Congress relating to the disposition of mineral lands. (Decided by the Supreme Court of California in the case of Gregory vs. Pershbaker, which decision is printed in Volume 73 of the California Reports, page 109.)

Section 955.—DISCOVERY OF OIL.—A discovery of oil within the limits of the claim is essential to the validity of an oil location. To constitute a discovery of oil, there must be something more than ordinary surface indications, such as the seepage of oil, or geological formations. There must be an actual discovery of oil in paying quantities. It is not necessary that this discovery be made before or at the time of the location, for a subsequent discovery will operate to perfect the location. But if the location is made before discovery of oil in paying quantities, and the locator leaves

the claim, without prosecuting work on it, another person may lawfully enter and locate on the land. (Decided by the Supreme Court of California, in the case of New England and Coalinga Oil Co. vs. Congdon, which decision is printed in Volume 34 of California Decisions, page 395.)

Section 956.—HOMESTEADER AND OIL LOCATOR.—A claimant to government land under a homestead entry acquires a valid title thereto as against prior locators under an oil placer mining location, where such locators were not in the possession of the land at the time of such entry, nor engaged in the diligent prosecution of the work toward a discovery, but had merely made improvements thereon in excess of the required amount of assessment work.

The rule that actual possession of a mining claim held under a mining location is unnecessary for the protection of the title thereto, is applicable only when the location is valid and complete.

The principle that discovery and appropriation are the source of title of mining claims, and assessment or development work is the condition of their continued possession, applies only when the location is valid and complete.

A location is valid and complete only when, after compliance with other requirements, a discovery of valuable mineral in place has been made.

In case of oil locations the locator is permitted to mark the boundaries of his location and post and record his notice after discovery and, while diligently prosecuting his work to a discovery, is entitled to protection in his possession undisturbed by any form of hostile or clandestine entry.

(Decided by the Supreme Court of California, in the case of McLemare vs. Express Oil Company, which decision is printed in Volume 40 of the California Decisions, page 371.)

Section 957.—TIME WITHIN WHICH LOCATION MUST BE MADE AFTER DISCOVERY.—The law of the United States does not specify any certain time within

which location must be made, and notices posted or recorded, after discovery. The location must be made, and the boundaries marked on the ground, within a reasonable time after discovery. If local rules and customs prescribe a certain time, that time must be followed. Whenever any patent to mineral lands shall contain a statement of the date of location of a claim or claims, upon which such patent is based, this statement will be received in the courts of California as prima facie evidence of the true date of the location. (Act of the Legislature, approved March 7, 1905.)

Section 958.—OIL AND ASPHALTUM.—Petroleum, natural gas, and asphaltum are held to be mineral, and may be located as placer claims. Much controversy over the question, whether public land in which petroleum was found could be located under the mining laws, caused the Congress of the United States to pass an act on the subject in 1897, which removes all doubt. The law reads: "Any person authorized to enter lands under the mining laws of the United States may enter or obtain patent to lands containing petroleum or other mineral oil, and chiefly valuable therefor, under the provisions of the laws relating to placer and mineral claims." Therefore, twenty acres of oil lands may be located as a placer claim by an individual, and as much as one hundred and sixty acres by an association of persons. It is not necessary that discovery of oil should be first made.

Act of Congress, approved February 11, 1897.

Section 959.—TRANSFER OF RIGHTS BY MEMBERS OF ASSOCIATION.—The rights acquired by an association of locators of mineral lands may be transferred among themselves before discovery, without affecting the whole claim, and the subsequent discovery by any grantee will perfect the entire original location.

Where an association of eight persons locate one hundred and sixty acres of mineral land for the purpose of discovering oil, and before discovery transfer a specific portion to a

stranger, such portion becomes a separate and independent claim, unless there be an agreement to the contrary; and a subsequent discovery of oil on such several portion will not perfect the entire original location. (Decided by the Supreme Court of California, in the case of Merced Oil Mining Company vs. R. L. Patterson, which decision is printed in California Decisions, Volume 35, page 550.)

Section 960.—ANNUAL LABOR AND ASSESSMENT WORK.—In order to hold a mining claim, the locator must do a certain amount of work each year, and this is measured not by time, but by the value of the work performed. On each claim located, whether quartz or placer, not less than one hundred dollars' worth of labor must be done, or an equal value of improvements made, during each year until a patent has been issued for the claim. A failure to comply with this law forfeits the claim, and leaves it open for relocation by another person. But if the original locator, his heirs, assigns, or legal representatives, after the time has expired within which he should have done the assessment work, and before another person has located on the ground, then proceeds to do the work, he saves the forfeiture and recovers the claim again to himself.

Revised Statutes of the United States, Section 2324.

Section 961.—WHEN FIRST WORK MUST BE DONE.—The law does not mean that the work should be done within a year from the date of location. The period for performing the assessment work commences on the first day of January succeeding the date of location of the claim. At least one hundred dollars' worth of work must be done each year.

Supplement to the Revised Statutes of the United States, Volume 1, page 276.

Section 962.—WHERE WORK SHOULD BE DONE.—Annual labor or improvements to the amount of one hundred dollars may be anywhere within the boundaries

of the claim. But it is not absolutely necessary that this work be done within such boundaries. It may be done on adjoining or neighboring ground, if the work so done tends to develop the claim, and this will be a sufficient compliance with the law.

And in a case where a miner holds several claims, the annual labor or improvements required for the whole of them may be done or made upon any one or more of them, provided that such labor or improvements tend to develop them all. And even if the claim upon which the work is done is patented, and the remainder are unpatented, it will make no difference, so long as the work done tends in fact to develop, and is done for the purpose of developing, the unpatented claims, and as assessment work upon them.

Work done or improvements made, for the purpose of developing the ground embraced in the location, outside of the limits of the claim, is as available for holding it as if done within its boundaries. Labor and improvements, within the meaning of the law, are deemed to have been had on a mining claim, whether it consists of one location or several, when the labor is performed or the improvements are made for its development, to facilitate the extraction of the metals it may contain; and such labor and improvements may lawfully be on ground which originally constituted only one of the locations, as in sinking a shaft; or the labor and improvements may be at a distance from the claim itself, as where the labor is performed for the turning of a stream, or to bring water on the claim, or where the improvement consists in the construction of a flume to carry off the debris or waste material. (Decided by the Supreme Court of California in the case of *De Noon vs. Morrison*, which decision is printed in Volume 83 of the California Reports, page 163.)

Section 963.—PROOF OF ASSESSMENT WORK.—

The law of California provides that proof of assessment work must be made by affidavit, within thirty days after the

time limited for performing the labor or making the improvements, particularly describing the labor performed and improvements made, and the value thereof. The law also provides that this affidavit must be recorded in the office of the County Recorder of the county in which the mine or claim is situated, within thirty days.

Statutes of 1891, page 219.

Act of the Legislature, approved March 13, 1909.

Section 964.—FORM OF PROOF OF ASSESSMENT WORK.—The following is a form of proof of assessment work:—

Proof of Labor.

STATE OF CALIFORNIA, }
County of..... } ss.

Before me the subscriber personally appeared.....
....., who being duly sworn says, that at least
\$100 worth of labor or improvements were performed or
made upon.....(here state name of min-
ing claim), situated in.....mining
district, County of....., State of California,
during the year ending December 31, 191... Such expendi-
ture was made by or at the expense of.....
....., owner of said claim, for the purpose
of holding said claim.

That the labor performed and improvements made were
as follows, to-wit:
.....
(Here give a particular description of the labor performed
.....
and improvements made.)
.....

That the value of said labor was \$.....

That the value of said improvements was \$.....
.....

Subscribed and sworn to before me this.....day
of....., 191...

.....,
Notary Public in and for the County of.....,
State of California.

Section 965.—RELOCATION OF CLAIM AFTER FORFEITURE.—If for any reason a mining claim has been forfeited, by failure to do assessment work, or by reason of abandonment, another person may relocate it. He must make his location as the original locator did, and in his notice of location he should state that the claim was originally located by another person (naming him), but that the claim had been abandoned or forfeited.

Section 966.—MINERAL ENTRIES WITHIN FOREST RESERVES.—The law provides that “any mineral lands in any forest reservation which have been or which may be shown to be such, and subject to entry under the existing mining laws of the United States and the rules and regulations applying thereto, shall continue to be subject to such location and entry,” notwithstanding the reservation. This makes mineral lands in the forest reserves subject to location and entry under the general mining laws in the usual manner.

Section 967.—LOCATION BY AGENTS.—A location of a mining claim may be made in the name of another than the actual locator, and when so made, the person in whose name it is made becomes vested with the legal title to the claim. A prospector may locate for himself, and then make other locations in the names of others, and he will be considered the agent of the persons in whose names the locations are made. (Decided by the Supreme Court of California in the case of *Moore vs. Hamerslag*, which decision is printed in Volume 109 of the California Reports, page 122.)

Section 968.—LOCATION BY MINORS.—A valid location of a mining claim may be made by a minor. The law allows any one who is a citizen, or who has declared his intention to become such, to locate a mining claim. The law does not require that the locator shall be of any particular age. In a California case the Supreme Court held

that a minor can make a location of a mining claim in this State, saying: "Nor is there any reason in the nature of things why a minor may not make a valid location. After the preliminary steps are taken, all that is required is that a certain amount of work shall be done. If the minor cannot do it, he can get any one to do it for him, and the condition imposed by the statute is fulfilled. If he cannot, the claim lapses, and is open to relocation by others. It may be added that so far as we know it is the practice of many mining communities for minors to locate claims." (Decided by the Supreme Court of California in the case of *Thompson vs. Spray*, which decision is printed in Volume 72 of the California Reports, page 528.)

Section 969.—TUNNEL CLAIMS.—The laws of the United States provide for certain tunnel claims, where a tunnel is run for the discovery of "blind lodes or veins;" and so long as the tunnel claimant operates his tunnel, the law reserves in his favor 3,000 feet from the face of the tunnel, with 1,500 feet in the opposite direction on the strike of the vein, from either wall of his tunnel. The law states that the owner of the tunnel shall have the right of possession of all veins or lodes within 3,000 feet from the face of such tunnel, on the line thereof, not previously known to exist, discovered in the tunnel, to the same extent as if discovered upon the surface. Locations on the line of such tunnel, of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while it is being prosecuted with reasonable diligence, are invalid. Failure to prosecute the work on the tunnel for six months is considered as an abandonment of the right to all veins on the line not discovered when the work ceased.

Revised Statutes of the United States, Section 2323.

Section 970.—LOCATION OF TUNNEL CLAIM.—The term "face," as used in the tunnel claim law, means the first working face formed in the tunnel, and signifies the point at which the tunnel actually enters cover, it being

from this point that the 3,000 feet are to be counted upon which prospecting is prohibited. To avail themselves of the benefits of this provision of law, the proprietors of a mining tunnel will be required, at the time they enter cover, to give proper notice of their tunnel location by erecting a substantial post, board, or monument at the face or point of commencement thereof, upon which should be posted a good and sufficient notice, giving the names of the parties or company claiming the tunnel right; the actual or proposed course or direction of the tunnel; the height and width thereof, and the course and distance from such face or point of commencement to some permanent, well-known objects in the vicinity; and at the time of posting such notice they should, in order that miners or prospectors may be enabled to determine whether or not they are within the lines of the tunnel, establish the boundary lines thereof, by stakes or monuments placed along such lines at intervals of not more than 600 feet, to the terminus of the 3,000 feet from the face or point of commencement of the tunnel, and the lines so marked will define and govern as to the specific boundaries within which prospecting for lodes not previously known to exist is prohibited while work on the tunnel is being prosecuted with reasonable diligence. A copy of the posted notice must be filed with the County Recorder, and should also be filed with the Recorder of the mining district, if any; with an affidavit attached of the owners, claimants, or projectors of the tunnel, stating the amount expended by themselves and their predecessors in interest in prosecuting the work; the extent of the work performed; and that it is their intention in good faith to prosecute the work on the tunnel with reasonable diligence for the development of a vein or lode, or for the discovery of mines.

Section 971.—LODE AND PLACER CLAIMS IN THE SAME GROUND.—It sometimes occurs that a lode will be discovered within the boundaries of a placer claim. In that event, the owners of the placer claim have an

immediate right to apply to the Government for a patent, and the application must state the existence of the lode. The Government will then issue a patent for the lode, fifty feet in width, upon the payment of \$5.00 per acre; and also a patent for the placer portion of the land upon the payment of \$2.50 per acre. If the owner of a placer claim makes application for a patent, without mentioning a known vein or lode within its boundaries, any other person may locate the lode, in the same manner as any other quartz claim is located, but acquiring only 1,500 by 50 feet.

Revised Statutes of the United States, Section 2333.

Section 972.—DISCOVERY OF VEIN PASSING THROUGH PLACER CLAIM.—If a discovery is made on a vein passing through a placer claim, and at a point just outside the boundary of the placer claim, the discoverer of the lode may make a location which will include such portion of the placer claim as is required to secure a full lode claim of the dimensions customary in that mining district; and he may then mine the vein underneath the surface of the placer.

Section 973.—MILL SITES.—The owner of a lode claim may also locate, in the same manner as mining claims are located (that is, by posting and recording notice, and erecting monuments for identification), five acres of non-mineral land for a mill site. The mill site need not be adjacent to the mining claim. It must be used for a mill site in connection with the mining claim, where a mill site is located by the owner of a lode claim. But the law further provides that the owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also locate a mill site, not exceeding five acres of non-mineral land, and obtain a patent for it.

Revised Statutes of the United States, Section 2337.

Section 974.—TIMBER FOR MINING PURPOSES. The law allows sufficient timber to be cut on mineral land for the proper working of the mine proper. Timber for

the mine, shafts, or tunnels, for houses for employees, and other purposes in the working of the mine, may lawfully be cut and used.

Section 975.—WATER AND WATER RIGHTS FOR MINING PURPOSES.—For the law as to water and water rights for mining purposes, see the subject, "Water and Water Rights."

Section 976.—MINING PARTNERSHIPS.—For the law as to mining partnerships, see under the heading "Partnership."

Section 977.—LIENS ON MINING CLAIMS.—For the law as to liens on mining claims, see under the heading, "Mechanics' Liens."

Section 978.—ENTRY OF COAL LANDS.—Coal lands may be entered without making the location required for other claims. There is a difference, also, in the persons qualified to take coal lands, and in the number of acres which can be taken. The person who takes coal land must not only be a citizen of the United States, or have declared his intention to become such, but he must also be over the age of 21 years. Within sixty days after the date of actual possession and the commencement of improvements on the land, an individual may enter at the Land Office in the district any quantity of vacant coal lands not exceeding 160 acres. An association of persons may enter not exceeding 320 acres. The price to be paid for coal lands is \$20 per acre, for lands within fifteen miles of a completed railroad, or \$10 per acre for lands more than fifteen miles from a completed railroad.

Revised Statutes of the United States, Section 2348.

Section 979.—HOW TO OBTAIN A PATENT TO A MINING CLAIM.—The Revised Statutes of the United States, Section 2335, provide the manner in which a patent

to a mining claim may be obtained. It will be seen from what follows that the claim-owner who desires a patent must go to a lawyer, to have his application made out, and the various plats and notices properly filed and published; and as he cannot safely use any of the necessary forms himself, without the aid of a competent lawyer, the forms are not given in this book. The claimant who wants a patent is required, in the first place, to have a correct survey of his claim made, under authority of the United States Surveyor-General for California; such survey to show with accuracy the exterior surface boundaries of the claim, which boundaries are required to be distinctly marked by monuments on the ground. Section 2335 of the United States Revised Statutes is as follows: "A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the United States Surveyor-General, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his

office for the same period. The claimant at the time of filing this application, or at any time thereafter, within sixty days of publication, shall file with the register a certificate of the United States Surveyor-General that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication, the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists."

Revised Statutes of the United States, Section 2335.

Section 980.—MINING LEASE.—A mining lease is necessarily different in many respects from the ordinary lease, for it must provide for amount and character of work to be done, timbering, the use of machinery, inspection of work and mine, the payment of royalty, and possibly other matters, which never enter into leases of other property.

A mining lease must be in writing, if the term is for more than one year.

Section 981.—FORM OF MINING LEASE.—The following is a form of mining lease:—

THIS INDENTURE, made this.....day of
....., in the year of our Lord one thousand nine
hundred and....., between.....
....., lessor, and.....lessee or
tenant, Witnesseth, That the said lessor for and in con-
sideration of the rents, royalties, covenants, and agreements

hereinafter reserved, and by the said lessee to be paid, kept, and performed, has granted, remised, and let, and by these presents does grant, remise, and let unto the said lessee, all the following described mine and mining property, situated in.....mining district, County of....., State of California, to-wit:

(Description of property.)

..... Together with the appurtenances....., to have and to hold unto the said lessee or tenant for the term of.....years from the date hereof, expiring at noon on the.....day of....., A. D., unless sooner forfeited or determined through the violation of any covenant hereinafter against the said tenantreserved.

And in consideration of the said demise, the said lessee does covenant and agree with said lessor as follows, to-wit:—

To enter upon said mine or premises and work the same mine fashion, in manner necessary to good and economical mining, so as to take out the greatest amount of ore possible, with due regard to the safety, development, and preservation of the said premises as a workable mine.

To work and mine said premises as aforesaid steadily and continuously from the date of this lease; and that any failure to work said premises with at least..... persons employed for the space of.....consecutive days may be considered a violation of this covenant.

To well and sufficiently timber said mine at all points where proper, in accordance with good mining; and to repair all old timbering wherever it may become necessary.

To allow said lessor and his agents to enter upon and into all parts of said mine for the purpose of inspection, with use of all passages, ropes, windlass, ladder-ways, and all other means of ingress and egress for such purpose.

To not assign this lease, or any interest thereunder, and to not sublet the said premises or any part thereof, without the written assent of said lessor, and to not allow any person or persons except the said lessee and his workmen to take or hold possession of said premises or any part thereof under any pretense whatever.

To occupy and hold all cross or parallel lodes, dips, spurs, feeders, crevices, or mineral deposits of any kind, which may be discovered in working under this lease, or in any tunnel run to intersect said.....lode, or by the said

lessee or any person or persons under him in any manner at any point within.....feet of the center line of said lode, as the property of said lessor; with privilege to said lessee of working the same as an appurtenance of said demised premises, during the term of this lease; and to not locate or record the same, or allow the same to be located or recorded, except in the name of said lessor.

To keep at all times the drifts, shafts, tunnels, and other passages and workings of said demised premises thoroughly drained and clear of loose rock and rubbish of all kinds.

To pay and deliver to said lessor as royalty,..... of all ore to be extracted from said premises during said term, of like assay to that retained by said lessee, delivered at.....as soon as mined, without offset, deduction, or charge whatever, except lessor's proportion for packing.

To deliver up to said lessor the said premises, with the appurtenances and all improvements.....in good order and condition, with all shafts and tunnels and other passages thoroughly clear of rubbish and drained, and the mine in all points ready for immediate continued working (accidents not arising from negligence alone excusing), without demand or further notice, on said.....day of ,A. D., at noon, or at any time previous, upon demand for forfeiture.

And finally, upon the violation by said lessee, or any person under him, of any covenant or covenants hereinbefore reserved, the term of this lease shall, at the option of said lessor, expire, and the same and said premises with the appurtenances shall become forfeit to said lessor; and said lessor or his agent may thereupon, after demand of possession in writing, enter upon said premises and dispossess all persons occupying the same, with or without force, and with or without process of law; or at the option of said lessor, the said tenant and all persons found in occupation may be proceeded against as trespassers from the beginning of said term both as to realty and the ore served therefrom; or as guilty of unlawful detainer.

Each and every clause and covenant of this indenture shall extend to the heirs, executors, and administrators of all parties hereto; and to the assigns of said lessor; and as said lessor may elect, to the assigns of said lessee.

In witness whereof, The said parties, lessor and lessee, have hereunto set their hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

(Here add acknowledgment before Notary Public.)

Section 982.—OIL AND GAS LEASES.—The law is more strictly applied to leases for oil and gas purposes than to any others. Other minerals, being of solid formation, are in place within certain boundaries, or, being placer, yet are not usually shifting nor fluctuating. Oil and gas are fugitive and wandering, and their existence within the limits of a particular tract is uncertain. Some of the principles of law applied to oil and gas leases are as follows:—

(a)—Right to Bore for Oil Necessarily Exclusive.—The Supreme Court of the United States has decided that the right to bore for oil or gas within a given area is necessarily exclusive, owing to the peculiar nature of the operations. Therefore, if the owner of land leases to another the right to bore for oil or gas within a certain described area, he is prohibited, whether expressed in the lease or not, from boring another well therein himself, and he may be prevented by injunction from interfering with the exclusive rights of the lessee. (Decided by the Supreme Court of the United States in the case of *Brown vs. Spillman*, which decision is printed in Volume 155 of the United States Supreme Court Reports, page 665.)

(b)—Lessee Must Begin Operations Within a Reasonable Time.—If the lease is silent as to the time when the lessee must begin boring, the law fills the gap by providing that he must begin operations within a reasonable time. What is a reasonable time will depend upon the particular case and all the circumstances; for instance, the nature of the country, the ease or difficulty with which machinery may be brought on the ground, the availability of labor, etc.

(c)—Failure to Commence Work Forfeits the Lease.—Although the lease is for a definite term, yet a failure to commence work within the time named, or, if no time is named, within a reasonable time, forfeits the lease.

(d)—Work Must Be Prosecuted With Diligence.—When work is once begun, it must be carried on with diligence. This does not mean every day, or every hour. But there must not be any unreasonable or prolonged cessation from actual operations. The work must be carried on so steadily, and with such practical application, as will show the good faith of the lessee.

(e)—Lease Must Be Literally Complied With.—An oil lease must be literally complied with. If the lessee agrees to sink a well of a certain bore, he will not comply with his lease by sinking a well of a smaller bore. He must give it the size and capacity agreed on.

(f)—Failure to Find Oil.—Where the lease is for a fixed period, and as much longer as oil is found or produced in paying quantities, if oil is not found in paying quantities within the time, the lease is forfeited.

(g)—Net Proceeds.—Where the lessee agrees to pay the lessor one-tenth, or any other portion, of the profits realized from the sale of the oil produced, the word "profits" does not mean the gross output, but only the net amount realized after deducting expenses.

(h)—Failure to Pay Royalty.—A failure to pay the royalty agreed on by the lessee will forfeit the lease, at the option of the lessor.

Section 983.—FORM OF OIL LEASE.—The following is a form of oil lease. The lease, if it is to be recorded, should be acknowledged.

THIS LEASE, Made the.....day of.....,
 A. D. 191.., by and between.....

 of the County of....., State of California, lessor..,
 and

 lessee...

WITNESSETH: That said lessor.., for and in consid-
 eration of the rents, covenants, and agreements hereinafter
 mentioned, reserved, and contained on the part and behalf
 of said lessee.. to be paid, kept, and performed, does by
 these presents grant, remise, and let unto said lessee.., the
 exclusive right, privilege, and easement of sinking, boring,
 developing, and working to any desired depth, wells for the
 extraction of natural gas, petroleum, kerosene, coal oil, and
 other oil, gaseous and volatile substances, and of taking from
 such wells, and appropriating, having, using, and disposing
 of any and all of said substances, in all the certain tract
 of land situate in the County of....., State
 of California, described as follows, to-wit:

(Here describe land.)

.....

 and also the right, privilege, and easement of conducting
 and carrying away from the said wells and other wells that
 may be sunk or bored by said lessee, on adjacent and
 contiguous lands through pipes underground, as hereinafter
 provided, all natural gas, petroleum, kerosene, coal oil, and
 other oil, gaseous, and volatile substances extracted from
 said wells.

To have and to hold all of said rights, privileges, and ease-
 ments unto said lessee.. exclusively from the.....
 day of....., A. D. 191.., for and during the term
 of.....years, with the right to said
 lessee.. to a renewal of this lease from said lessor.. for a
 second term of.....years, from and after the
 expiration hereof upon the terms hereinafter provided.

Said lessor.. further agrees that said lessee ..may occupy
 and use at one or more places on said tract of land, an
 area not to exceed.....acres,
 upon which to sink a well, wherever a well may be bored
 thereon. A piece of land shall be selected without un-
 necessary injury to the lessor.., of such shape as the

lessee.. may desire for boring such wells and operating the machinery used in boring, working, and casing the same, and care and storage of the product, said piece of land to be so used so long during the term of this lease as is necessary for said purposes.

It is further understood, that should any natural gas, petroleum, kerosene, coal oil, or other oil, gaseous or volatile substances be produced from said wells, or from wells sunk or bored by the lessee on adjacent or contiguous lands, the said lessee shall have the right to enter upon said lands and dig trenches from said wells through said lands, without unnecessary injury to the lessor, and lay pipes therein for conveying away therefrom any and all of said substances, provided the top or upper surface of said pipes are laid at least.....inches below the surface of the ground, and the trenches in which they are laid are well filled in with earth so as not to interfere with the full and free cultivation or other use or enjoyment of said lands by the lessor, but no such trenches are to be dug so as to interfere with the use of or to injure.....
.....or other improvements on said premises at the time such trenches are dug, and none are to be dug through any
without giving the owner written notice thereof, and paying therefor the value of all property injured or destroyed thereby; and no pipe is to be laid across any creek or slough so as in any way to obstruct or interfere with the free and full flow of water through the same, and all pipes laid through said lands are to be made tight and secure so as not to permit the escape therefrom of any substances injurious to any property, and should any such substance escape from such pipes and injure any such property (and the lessee should fail to repair such pipes and prevent such escape and stop such injury, within.....days after receiving from the lessor a written notice so to do), then the lessee shall be liable for and shall pay to the owner all damages so caused.

It is further understood and agreed by and between the parties hereto, that the lessee, so long as this lease remains in full force, is to be the sole and exclusive owner for and during the full term of this lease, and of every renewal thereof, of all natural gas, petroleum, kerosene, coal oil, and other oil, gaseous, and volatile substances extracted from wells on said land; and the lessor shall have no right during the continuance of this lease or any renewal thereof

before default in the payment of the royalty hereafter mentioned, to bore or sink any well or wells for natural gas, petroleum, kerosene, coal oil, or other oil, gaseous or volatile substances on any of said land, or to use or take any such substance therefrom; but the lessor is at all times to be the sole and exclusive owner of all water that may flow therefrom, provided that the lessee may use sufficient of said water to operate and run any steam engines and boilers used at or near said well for boring or working the same, and subject to the uses herein provided, shall permit the flow of water from said wells for the use and benefit of the lessor, so far as the same may flow without interfering with the proper use of the wells by the lessee.

And the lessee shall have the right at all times during the continuance of this lease or any renewal thereof, to enter upon and pass over said land to and from all wells bored thereon as herein provided; but he is to do no damage to any of said premises without paying a fair and reasonable compensation therefor within.....days after such damage is done, and will give the lessor notice in writing before commencing to bore a well on any portion of said land.

It is further understood and agreed, that the lessee shall at all times during the existence of this lease have the right to enter upon and remove from said land all improvements, machinery, well-casing, and all other property placed by him thereon or in wells thereon.

It is further understood and agreed, that the lessee shall, so long as this lease remains in force, pay to the lessor the value at the well or wells of the.....part of all the gas, oil, or other products herein mentioned, said value to be ascertained and fixed at the point of production, on or before the.....day of each month, and payment shall be made on the.....day of each and every month for all gas, oil, or other products produced during the preceding calendar month.

It is expressly and distinctly understood and agreed between the parties hereto, that it shall at all times be the privilege of the lessee to discontinue and terminate this lease by a failure to pay any installment of monthly royalty within.....days after the same becomes due as herein provided, and such failure shall operate ipso facto as a surrender of this lease, and upon such surrender the lessee shall be discharged from all liability to pay any rent to become due by the terms of this lease.

And should any well or wells bored or sunk on said land as herein provided be abandoned by the lessee, he shall give the lessor.....days' written notice of his intention to abandon the same. If the lessor so desires, and shall pay to said lessee within.....days the costs of the casing already in said well or wells, the lessee agrees to sell the same to the lessor at the actual cost of said casing delivered at the mouth of the well, and thereupon the lessor shall become the owner of such well or wells and all of the products thereof of any kind or nature.

Nothing herein contained is to be so construed as to affect the right of the lessor to fully possess, occupy, and enjoy said lands subject to the conditions herein expressed in favor of the lessee.

It is understood and agreed between the parties hereto that wherever the term lessor is used in this lease, it extends to and includes the heirs, executors, administrators, and assigns of the lessor named herein; and the term lessee extends to and includes the heirs, executors, administrators, and assigns of the lessee herein named.

And now it is further understood and agreed by all the parties hereto, that if none of said natural gas, oil, or other kindred substance is found in or near said lands, and the lessee does not proceed to develop said leased lands withinmonths from this date, and complete a well within.....months thereafter, then this lease shall terminate and be of no value, otherwise to remain in full force and effect.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

..... (Seal.)

..... (Seal.)

Section 984.—MINING DEEDS.—A mining claim may be sold and transferred by deed, either before or after a patent has been applied for or obtained. The locator of a mining claim obtains the legal title by his location, and may transfer his title at any time.

Section 985.—FORM OF MINING DEED.—The following is a form of mining deed for quartz. If used for

placer claim, the description should be changed so as to apply:—

THIS INDENTURE, made the.....day of
....., in the year of our Lord one thousand nine
hundred and....., between.....
....., of the County of....., and State
of California, party of the first part, and.....
....., of the County of....., and State
of California, party of the second part;

Witnesseth, That the said party of the first part, for and
in consideration of the sum of.....Dol-
lars, lawful money of the United States of America, to him
in hand paid by the said party of the second part, the
receipt whereof is hereby acknowledged, hath granted, bar-
gained, sold, remised, released, and forever quitclaimed,
and by these presents does grant, bargain, sell, remise,
release, and forever quitclaim, unto the said party of the
second part, his heirs and assigns, the.....
lode, as located, surveyed, recorded, and held by said party
of the first part, situated in.....mining dis-
trict,County, State of California, and
named and called.....Mine, together with
all the dips, spurs, and angles, and also all the metals, ores,
gold and silver bearing quartz, rock, and earth therein,
and all the rights, privileges, and franchises thereto inci-
dent, appendant, and appurtenant, or therewith usually
had and enjoyed; and also, all and singular the tenements,
hereditaments, and appurtenances thereunto belonging, or
in any wise appertaining, and the rents, issues, and profits
thereof; and also, all the estate, right, title, interest, prop-
erty, possession, claim, and demand whatsoever, as well in
law as in equity, of the said party of the first part, of, in,
or to the said premises, and every part and parcel thereof,
with the appurtenances.

To have and to hold, all and singular, the said premises,
together with the appurtenances and privileges thereto in-
cident, unto the said party of the second part, his heirs
and assigns forever. In witness whereof the said party
of the first part has hereunto set his hand and seal the
day and year first above written.

..... (Seal.)

(Here add acknowledgment before Notary.)

Section 986.—WORKING MINE ON SHARES.—A valid agreement may be made for the working of a mine on shares, and such agreement does not constitute and will not be considered a lease of the mining claim. Under such a contract, the parties have a common interest in the products of the mine when taken out. Such a contract does not create the relation of landlord and tenant, but fixes a rule of compensation for services rendered. It is, in all its essential features, a contract for labor to be performed and to be paid for by a share of the profits realized from such labor. (Decided by the Supreme Court of California in the case of Hudepahl vs. Liberty Hill Mining Co., which decision is printed in Volume 80 of the California Reports, page 553.)

Section 987.—WHEN BOUNDARY MARKS ARE SUFFICIENT.—The boundary marks are always sufficient to sustain a location if they are so distinct and plain that the claim can be identified on the ground. In a case in Siskiyou County, two adjoining mining claims were each marked at the corners by four stakes about a foot and a half long, flattened on two sides, and driven into the ground about four inches; two stakes being at the ends of the dividing line common to both claims; some stakes being in the brush, and others in the open ground. In the middle of the dividing line was a tree blazed on both sides, on one of which the notices of location were posted, describing the claims by courses and distances, running from the tree to a stake, and from stake to stake to point of beginning. The ledge on both claims had been sufficiently developed to show its existence and direction. The Supreme Court held that the law as to marking the location on the ground was sufficiently complied with, under the most stringent construction of the law. (Decided by the Supreme Court of California in the case of Eaton vs. Norris, which decision is printed in Volume 131 of the California Reports, page 561.)

Section 988.—ERROR IN DESCRIPTION IN LOCATION NOTICE.—The description in a notice of location of a mining claim, specifying the number of acres claimed, is sufficient, if it designate the land by the adjoining tracts on the north, east, and south, and by unoccupied lands on the west; and the insertion of the wrong legal subdivisions will not invalidate it. (Decided by the Supreme Court of California in the case of *Duryea vs. Boucher*, which decision is printed in Volume 67 of the California Reports, page 141.)

Section 989.—CHARACTER OF ANNUAL ASSESSMENT WORK.—Whether the character of the annual assessment work is of the kind required by law is always a question of fact, to be determined by the surrounding circumstances. Not all expenditures made with a view to working a mine would be considered work expended upon a mine for the purpose of holding it; as, for instance, work done at a distance from the mine in the construction of a mill. On the other hand, it has been decided that the services of a watchman looking after the buildings erected to work a mine properly constitutes assessment work, though the mine is idle at the time. (Decided by the Supreme Court of California in the case of *Altoona Quicksilver Mining Co. vs. Integral Quicksilver Mining Co.*, which decision is printed in Volume 114 of the California Reports, page 100.)

Section 990.—TIME WITHIN WHICH RELOCATION CAN BE MADE.—The law of California gives to the occupant of a mining claim thirty days after the expiration of the year within which to file his affidavit of assessment work done, in the office of the County Recorder; and the mine is not open to relocation until after the expiration of the thirty days. For instance, the occupant has the whole of the calendar year succeeding the date of his location in which to do his assessment work; then he has thirty days more in which to file his affidavit of work done with the County Recorder, and no relocation can be valid

within such times. (Decided by the Supreme Court of California in the case of Harris vs. Kellogg, which decision is printed in Volume 117 of the California Reports, page 484.)

Statutes of 1891, page 219.

Section 991.—RESUMPTION OF WORK.—As already stated, the locator of a mining claim must expend upon it in labor or improvements \$100 each year, and non-compliance with this requirement renders the claim subject to relocation by others, unless, before such relocation, the original locator, his heirs, assigns, or legal representatives, have resumed work upon the claim. This resumption of work, however, must be bona fide in character and with the intention of completing the amount of work due. It is not sufficient, when the claim has become subject to relocation, for the claimant to go upon it and do a few hours' or a few days' work, and then quit, thinking that he has thus, by such perfunctory resumption, done all that is sufficient to hold his claim for another year; he must resume work in good faith, with the intention of completing the full amount required by law. (Decided by the Supreme Court of California in the case of McCormick vs. Baldwin, which decision is printed in Volume 104 of the California Reports, page 227.)

Section 992.—FAILURE TO COMPLY WITH LOCAL CUSTOMS IN WORKING MINING CLAIMS.—

A right to hold and work a mining claim when acquired may be lost by a failure or neglect to comply with the rules and regulations of the miners, relative to the acquisition and tenure of claims, in force in the district where the claim is located; and if such rules and regulations are not complied with by those holding claims in the district, the ground becomes once more open to the occupation of the next comer. (Decided by the Supreme Court of California in the case of St. John vs. Kidd, which decision is printed in Volume 26 of the California Reports, page 263.)

Section 993.—OVERLAPPING LOCATIONS.—It is familiar history in mining districts that claims have often been found to overlap one another to a greater or less extent. When this occurs, the law of California is, in so far as the ground taken was vacant, each location, if properly made in other respects, is valid and sufficient to that extent. As to the ground actually covered by the two locations, the right will be determined by ascertaining which location was first made. If A makes a location to-day, and B makes a location to-morrow, and the location of B covers a part of the ground located by A the day before, B will lose so much of his location as overlaps the location of A; for A was first in time, and thus acquired a prior right. But B will not lose his whole location. So much of it as does not overlap the prior location will be good, and he can hold that much. (Decided by the Supreme Court of California in the case of Doe vs. Tyler, which decision is printed in Volume 73 of the California Reports, page 21.)

Section 994.—INTERSECTING VEINS.—Where two veins or lodes of mineral belonging to different owners intersect, the owner of the vein which was first located has the right to the ore in the space of intersection, but the other owner has a right of way through such space for the purpose of working his vein. (Decided by the Supreme Court of California in the case of Wilhelm vs. Silvester, which decision is printed in Volume 101 of the California Reports, page 358.)

Section 995.—RULE THAT END LINES SHALL PARALLEL EACH OTHER.—The Revised Statutes of the United States say that "the end lines of each claim shall be parallel with each other." But this does not mean that the two end lines must be **exactly** parallel. In the case of Doe vs. Sanger, a San Bernardino County mining suit, the Supreme Court of California stated the true rule as follows: "It has been held that the provisions of the

Federal statutes relating to lode claims were passed with the understanding, founded upon the general practice of miners, that the surface locations of such claims will be made lengthwise along the general direction of the lode or vein in the general form of a parallelogram, with the side lines along the lode, and the end lines across it. But suppose that a surface location should be made, for instance, in the shape of an octagon. In such a case there would be no end lines and no side lines, and if the locator could go outside his lines in one direction he could do so in eight directions, and encroach upon his neighbors from every point of the compass. If, however, a location is made in substantial compliance with the intent of the statute—that is, where there are two side lines running along the course of the vein, and two shorter end lines running across it, so that the two sets of lines are distinct, and apparent—such a location is not void, but gives the right to follow a vein laterally, although the original end lines may not be exactly parallel, or although they may differ from a true parallel.” (Decided by the Supreme Court of California in the case of *Doe vs. Sanger*, which decision is printed in Volume 83 of the California Reports, page 203.)

Section 996.—EXTRA-LATERAL RIGHT, OR RIGHT TO PURSUE THE VEIN OR LODGE ON ITS DIP BEYOND THE SIDE LINES OF THE CLAIM.

—Section 2322 of the Revised Statutes of the United States provides: “The locators of all mining locations shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and all veins, lodes, and ledges throughout their entire depth the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside of the vertical side lines of such surface locations.” A mineral vein or lode seldom or never descends vertically into the earth, but on its downward course makes an angle with the vertical—

or, in popular terms, it does not go straight down, but in a slanting direction—so that, if followed far enough into the interior of the earth, it will eventually be found to extend outside of the side lines of the claim. In other words, the vein eventually reaches the point in the interior of the earth where, if a vertical line were run to the surface it would strike a point outside the surface boundaries of the claim. The right to thus follow the vein on its downward course beyond the side lines of the claim is sometimes called the extra-lateral right, and is conferred by the Section of the Revised Statutes of the United States just quoted. In thus following the vein on its dip, the miner is confined, however, to that part of it which is found between the end lines of his claim extended in their own direction. The law prescribes that the end lines of a claim shall be parallel with each other. Yet for the full enjoyment of this extra-lateral right it is important that the end lines of the claim should follow this requirement of parallelism; for it has been held by the courts that where the end lines were not parallel, but converged in the direction of the dip of the vein, the miner could not pursue the vein outside of his side lines beyond the point where his converging end lines extended met. On the other hand, where the end lines diverged in the direction of the dip, thus making the portion of the vein included within them larger the farther such end lines were extended, it has been held that the miner could not take the ore from any greater length of vein outside of his side lines than was included between his end lines as laid down on the ground.

Section 997.—DAMAGES FOR TRESPASS ON MINING CLAIM.—One who unintentionally, and in the honest belief that he is lawfully exercising a right which he has, enters upon the mining property of another and removes his ore, is liable in damages for its value, and for no more. He may limit the recovery of the owner by deducting from the value of the ore at the mouth of the shaft the cost of mining and transporting it to that point. But one who

wilfully and intentionally takes ores from the land of another is liable to him for the full value of the property taken, at the time of his conversion of it, without any deduction for the labor bestowed or expense incurred in removing it and preparing it for the market.

Section 998.—STATE HOMESTEAD ON MINING CLAIM.—The locator of a mining claim may, under the State law, declare a homestead upon it, if he is living on it; and when that is done it has all the characteristics of a homestead declared upon any other character of land; subject, however, to the holder complying with the requirements of the law relating to the holding of mining claims until issue of patent from the United States Government. (Decided by the Supreme Court of California in the case of Gaylord vs. Place, which decision is printed in Volume 98 of the California Reports, page 472.)

Section 999.—SCHOOL LANDS.—The law of Congress granting certain agricultural lands to the State of California for school purposes, and providing that mineral lands shall not be subdivided into sections, public lands belonging to the State under said Act, if agricultural, which the proper United States officials have platted into a section and classified as agricultural lands, and concerning which the Receiver of the public land office has certified that the State's title thereto under said Act is free from adverse claims, are not, after their disposal by the State, subject to re-entry as mineral lands; the determination of the United States officials that the lands were agricultural being conclusive against a collateral attack. (Decided by the Supreme Court of California in the case of Saunders vs. La Purisima Gold Mining Co., which decision is printed in Volume 125 of the California Reports, page 159.)

Section 1000.—AUTHORITY OF MINE SUPERINTENDENT TO PURCHASE SUPPLIES.—Mine Superintendents, by virtue of their position, have authority to

purchase all supplies necessary for the operation of the mine; and when they do so the owners will be bound to pay for them. In one case it was held by our Supreme Court that the owner of the mine was bound to pay for provisions ordered by the Superintendent for a boarding house at which the miners lived, and the Court said: "The record discloses the fact that it was absolutely necessary that provisions should be furnished this boarding-house, in order that the mine might continue in operation; and it would seem that, aside from any express authority from the defendant to purchase these articles, and regardless of the question of ostensible agency, the respective Superintendents of the mine, by virtue of their positions alone, had the power to bind the defendant for the payment of these goods." (Decided by the Supreme Court of California in the case of *Heald vs. Hendy*, which decision is printed in Volume 89 of the California Reports, page 632.)

Section 1001.—HYDRAULIC MINING.—Hydraulic mining, as the term is used in the laws of California, is mining by means of the application of water, under pressure, through a nozzle, against a natural bank. It may be carried on in this State wherever and whenever it can be done without material injury to the navigable streams, or the lands adjacent thereto.

Civil Code, Sections 1424, 1425.

Section 1002.—TAILINGS AND DEBRIS.—No person or corporation has the right to cover his neighbor's land with debris from mine or mill, nor to permit any of the tailings or refuse matter to flow or be placed on the land of another. For the violation of another's right of use and possession, by flowing or covering his land with debris, or by causing his soil to wash or cave, the owner of the mine will be liable in damages, and the injury may be stopped by injunction.

Section 1003.—CALIFORNIA DEBRIS COMMISSION.—The Congress of the United States passed an Act, in 1893, creating a commission called the California Debris Commission. The purpose of the law was to provide a means for controlling the deposit of debris in the rivers and streams in that part of California constituting the San Joaquin and Sacramento watersheds. As enacted, after creating the California Debris Commission, it declares, for the purpose of the Act, “hydraulic mining” and “mining by hydraulic process” to have the meaning and application given to those terms in the State of California. The Act prohibits and declares unlawful such hydraulic mining “directly or indirectly injuring the navigability of said river systems, carried on in said territory, other than as permitted under its provisions.” From these provisions it seems quite clear that its real intent and meaning is to prohibit and make unlawful any and all hydraulic mining in the territory drained by the Sacramento and San Joaquin river systems in the State of California, directly or indirectly injuring the navigability of said river systems; and to permit it in all cases where the work can be prosecuted without such injury to the navigability of said river systems or to the lands adjacent thereto; and that, in order to properly determine the facts upon which the legislative will is to act, a skilled commission is created, whose duty it is to ascertain and determine what will or will not cause the prohibited injury, and to prescribe the character of impounding works, and the extent to which hydraulic mining in the territory described may be carried on without causing such injury.

Section 1004.—CONSOLIDATION OF MINING CORPORATIONS.—Two or more mining corporations owning claims lying in the same vicinity may consolidate upon terms agreed upon by the respective Boards of Directors or Trustees of such corporations, provided the written consent of stockholders representing two-thirds of the capital stock of each company be obtained. Such consolidation

does not relieve the respective companies or their stockholders of existing indebtedness. In case of such consolidation, notice of the same must be given by advertising for at least one month in a newspaper in the county where the mining property is situated, and also in a newspaper published in the county where the principal place of business of any of such corporations shall be. When the consolidation is completed a certificate thereof, containing the manner and terms of the consolidation, must be filed in the office of the County Clerk of the county in which the original certificate of incorporation of any of said companies was filed, and a copy thereof must be filed in the office of the Secretary of State. Such certificate must be signed by a majority of each Board of Directors or Trustees of the original companies; and they must within thirty days after the filing of such certificate, and after at least ten days' public notice, call a meeting of the stockholders of all of said companies so consolidated, to elect a Board of Trustees or Directors for the consolidated company for the ensuing year. The said certificate must also contain all the matters required to be stated in Articles of Incorporation.

Civil Code, Section 361.

Section 1005.—TRANSFER OF STOCK IN MINING CORPORATIONS.—The Civil Code of California, Sections 586, 587, makes the following particular provisions about the transfer of stock in mining corporations: "Any corporation organized in this State for the purpose of mining or carrying on mining operations in or without this State, may establish and maintain agencies in other States of the United States, for the transfer and issuing of their stock; and a transfer or issue of the stock at any such transfer agency, in accordance with the provisions of its By-Laws, is valid and binding as fully and effectually for all purposes as if made upon the books of such corporation at its principal office within this State. The agencies must be governed by the By-Laws and the Directors of the corporation. All stock of such corporation, issued at a transfer agency,

must be signed by the President and Secretary of the corporation, and countersigned at the time of its issue by the agent having charge of the transfer agency."

Civil Code, Sections 586, 587.

Section 1006.—HOURS OF WORK IN UNDERGROUND MINES.—The period of employment for all persons working in underground mines in search of minerals, whether base or precious, or who are engaged in such underground mines for other purposes, or who are employed or engaged in other underground workings whether for the purpose of tunneling, making excavations or to accomplish any other purpose or design, or who are employed in smelters and other institutions for the reduction or refining of ores or metals, shall not exceed eight hours within any twenty-four hours, and the hours of employment in such employment or work day shall be consecutive, excluding, however, any intermission of time for lunch or meals; provided that, in the case of emergency where life or property is in imminent danger, the period may be a longer time during the continuance of the exigency or emergency.

Act of the Legislature, approved March 10, 1909.

Section 1007.—ABANDONED OIL WELLS.—Abandoned oil wells must be filled by the owner, with clay, earth or cement mortar, thoroughly packed and tamped, to a point above the upper oil-bearing strata. While withdrawing the casing, water must be effectually and permanently excluded.

Act of the Legislature, approved March 20, 1909.

Section 1008.—CAPPING GAS WELLS.—All persons, firms, corporations and associations are prohibited from wilfully permitting any natural gas wastefully to escape into the atmosphere.

All persons, firms, corporations or associations digging, drilling, excavating, constructing or owning or controlling any well from which natural gas flows shall upon the abandonment of such well, cap or otherwise close the mouth of or

entrance to the same in such a manner as to prevent the unnecessary or wasteful escape into the atmosphere of such natural gas. And no person, firm, corporation or association owning or controlling land in which such well or wells are situated shall wilfully permit natural gas flowing from such well or wells, wastefully or unnecessarily to escape into the atmosphere.

Any person, firm, corporation or association who shall wilfully violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

For the purposes of this act each day during which natural gas shall be wilfully allowed wastefully or unnecessarily to escape into the atmosphere shall be deemed a separate and distinct violation of this act.

Act of the Legislature, approved March 25, 1911.

Section 1009.—EXTRACTION OF MINERALS FROM THE WATERS OF STREAMS OR LAKES.—

Minerals contained in the waters of any stream or lake in this state shall not be extracted from said waters except upon charges, terms and conditions prescribed by law. No person, firm, corporation or association shall hereafter gain the right to extract or cause to be extracted said minerals from said waters by user, custom, prescription, appropriation, littoral rights, riparian rights, or in any manner other than by lease from or express permission of the state as prescribed by law; and no such lease or permission shall be granted for a longer period than twenty-five years.

Act of the Legislature, approved April 14, 1911.

Section 1010.—MINERAL LANDS UNCOVERED BY RECEDING WATERS OF LAKES.—

Where the waters of a lake, or other body of water, recede or drain away, thus leaving on State land valuable minerals uncovered; the land uncovered by the recession or drainage

of such waters will be subject to lease from the State, for periods not longer than twenty-five years, upon such charges, terms and conditions as may be prescribed by law.

Act of the Legislature, approved April 14, 1911.

Section 1011.—CONDITIONS OF LEASE OF MINERAL LANDS UNCOVERED BY RECEDING WATERS.

—Every person, firm or corporation taking from the waters of such stream, lakes or lands any minerals, shall file, on or before the last Monday in January of each year, with the county assessor of the county in which any such stream or lake is situated, and also with the state controller, a written statement, duly verified, showing in tons of 2,000 pounds, the amount of mineral taken by such person, firm or corporation from such water or land during the year ending December 31st last preceding and sold by said person, firm or corporation during the said year preceding. Any such person, firm or corporation neglecting or refusing to furnish such statement shall be subject to a fine of \$100.00 for each day after the said last Monday in January such person, firm or corporation shall fail to furnish such statement, and, in addition to said fine, shall forfeit all leases granting the right to extract such minerals from said water and said land. Any person who shall, either on behalf of himself or any firm or corporation, verify any such statement which shall be untrue in any material part, shall be deemed guilty of a misdemeanor.

In case either the assessor or the state controller shall not be satisfied with the statement as returned, he may make an examination of the matters necessary to verify or correct said statement, and, for that purpose, may subpoena witnesses and call for and compel the production of necessary books and papers belonging to the person, firm or corporation making the returns.

(a) **Royalty.**—The county assessor of the county shall, after examination and approval by him and the state controller of such statement, proceed to collect from such person, firm or corporation a royalty of 25 cents for each ton

of 2,000 pounds of mineral taken from such water or land by such person, firm or corporation and sold during the preceding year, in the manner provided for the collection of personal property taxes; provided that the royalty on sodium bicarbonate and on sodium hydrate so taken shall be fifty (50) cents for each ton of 2000 pounds.

(b) **Application to Lease Lands.**—Any person, firm or corporation desiring to lease any lands under this act must make application therefor to the surveyor general of the state, describing the lands sought to be leased by legal subdivisions, or, if the legal subdivisions are unknown to the applicant, by metes and bounds. The application must be accompanied by a filing fee of \$10.00.

(c) **Survey of Lands.**—Upon the receipt of such application, the surveyor general shall direct the county surveyor of the county in which such lands are situated to survey the land sought to be leased. The county surveyor shall make an actual survey of the land, at the expense of the applicant, establishing the four corners to each quarter section, and connecting the same with a United States survey; and within 30 days file with the surveyor general a copy, under oath, of his field notes and plat. If the county surveyor fails to make the survey as herein provided, the surveyor general shall immediately direct another person to make the survey at the expense of the applicant, and said survey shall be made and completed within 30 days after the authorization, and the field notes and plats, or copies thereof, shall be sworn to by the surveyor making them and shall be filed with the surveyor general.

(d) **Approval or Rejection of Application.**—All applications to lease land under this act shall be approved or rejected by the surveyor general within ninety days after the receipt thereof. Immediately after the approval of the application, the surveyor general shall execute and deliver to the applicant a lease of the lands described in the application.

(e) **Rental.**—The lands designated in this act shall be leased at the rate of \$2.50 per acre, per year, payable yearly in advance. All moneys received as rental for such lands and as royalty upon the mineral product of the waters of the lakes, streams or lands above mentioned, shall be paid into the state school land fund.

(f) **First Payment.**—Whenever any lease is delivered to the applicant by the surveyor general, the lessee shall, within 15 days thereafter, present said lease to the treasurer of the State of California, and make payment of the first annual rental. The treasurer shall receive the money and give a receipt therefor. All subsequent annual payments of rental must be paid to the state treasurer, in like manner, within 15 days after they become due.

(g) **Limit of Lease.**—In case payments are not made as herein provided, the lease and all rights thereunder shall cease and terminate. No lease shall run for more than 25 years; provided, that upon the expiration of any lease, such lease may be extended for a period of 25 years upon such terms and conditions as may then be prescribed by law.

(h) **Reservations to State.**—All leases made under the authority of this act shall contain a reservation to the state of a right to locate rights of way across such leased lands, subject only to the requirements that the rights of way shall be located in such manner as to cause the least injury to the leased lands across which the same may be located, and that any damage suffered by the lessee of such lands shall be compensated by the lessee of the lands for whose benefit the right of way is required; and every such lease shall be subject to, and shall contain a reservation of, the right of any city and county or incorporated city or town of this state to at any time appropriate and take, under the laws of this state relative to the appropriation of waters, water from any stream or lake tributary to or discharging into any stream or lake of the character mentioned in section one of this act for any use or uses within the authorized

powers of such city and county, or incorporated city or town.

(i) **Lease to Rights of Way.**—Leases of rights of way, not exceeding 100 feet in width, for access to any waters or lands designated by this act, may be applied for and granted in the manner herein provided for leasing lands. Such rights of way shall be leased at an annual rental of \$2.50 an acre, and the same shall be paid as herein provided for leased lands.

(j) **Termination of Lease.**—All leases of mineral lands provided for by this act shall cease and terminate on December 31st of any year if the lessee or assigns has not, during the year preceding, extracted or removed from such land and water an amount of mineral equal, in the aggregate, to a minimum of 5 tons per acre of land leased; provided that when a lease is not delivered to the lessee until after the fifteenth day of January of any year, the minimum tonnage for such year shall be less than five (5) tons, and shall be proportional to the number of days remaining in such year after the completion of the works.

(k) **Legislature May Change Royalty.**—The Legislature shall have the right to change, from time to time, the royalty per ton of minerals extracted and the annual rental per acre of land, and such change shall apply to all persons, firms or corporations holding leases hereunder; provided, that no lease given under this act shall be subject to any change, as to the royalty or rental provided for in said lease, subsequent to the execution of such lease until after ten years from the passage of this act.

(l) **Abandonment of Lease.**—Any lessee hereunder may abandon and surrender a lease at the expiration of any calendar year by filing with the county assessor of the county in which is situated the lands described in said lease, and with the surveyor general and the state controller, notices of said abandonment or surrender; but said notices must be filed at least 60 days before the expiration of said calendar year;

and said abandonment and surrender shall not absolve the said lessee from the payment of any royalty which may be due at the end of said fiscal year for minerals extracted from the waters or lands in this act specified.

Act of the Legislature, approved April 27, 1911.

Section 1012.—MORTGAGE OF MINING PROPERTY.—The directors of a mining corporation have no power or authority to mortgage the mining ground of the company without a ratification by the holders of two-thirds of the capital stock. The want of such ratification can be raised by anyone who connects himself with the title of the corporation which owned the property, as well as by the stockholders thereof. The consent of the stockholders cannot be presumed from the mere fact of the execution of the mortgage, whether under the corporate seal or not.

(Decided by the District Court of Appeals of California, Second District, in the case of Mrs. M. T. Bennett vs. Red Cloud Mining Company, which decision is printed in Volume 11 of California Appellate Decisions, page 623.)

PART IX.

WATER AND WATER RIGHTS.

Section 1013.—APPROPRIATION OF WATER.—The right to the use of running water, flowing in a river or stream, or down a canyon or ravine, may be acquired in California by appropriation. Appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purposes, the right ceases.

Civil Code, Sections 1410, 1411.

Section 1014.—NOTICE OF APPROPRIATION.—A person desiring to appropriate water must post a notice, in writing, in a conspicuous place at the point on the stream where he intends to take the water from it. This notice must state (1) that he claims the water there flowing to the extent of (giving the number) inches, measured under a four-inch pressure; (2) the purpose for which he claims it, and the place of intended use; (3) the means by which he intends to divert it; (4) and the size of the flume, pipe, or aqueduct in which he intends to divert it from the stream.

Statutes of 1903, page 361.

Section 1015.—NOTICE MUST BE RECORDED.—A copy of the notice of appropriation must be recorded, within ten days after it is posted, in the office of the Recorder of the county in which it is posted.

Statutes of 1903, page 361.

Section 1016.—CHANGE OF PLACE OF INTENDED DIVERSION.—The law passed in 1903, above stated, provides that after filing the notice of appropriation
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for record, "the place of intended diversion, or the place of intended use, or the means by which it is intended to divert the water, may be changed by the person posting said notice, or his assigns, if others are not injured by such change." But the law does not state in what manner the change shall be made, whether by posting and recording a new notice, or in some other way indicating the intention to change the place of diversion, the place of intended use, or the means of taking the water. The law being uncertain in this particular, it would be well to file a new notice for record stating the change.

Statutes of 1903, page 361.

Section 1017.—FORM OF NOTICE OF APPROPRIATION.—The following is a form of notice of appropriation, to be posted and recorded as stated in preceding sections. The notice should be posted at the outlet or point of diversion on the bank of the stream:—

Notice of Claim of Water.

The undersigned claims the water running in this stream to the extent of..... (state number of inches) inches, measured under a four-inch pressure.

I claim the water for.....
(Here state purpose for which water is to be used.)
and I intend to use it at.....
(Here state place where water is to be used.)

.....
.....
I intend to divert the water by means of.....
.....
(Here state whether it is intended to use a flume, pipe, ditch,
.....
or aqueduct.)

.....
The size of the flume (or ditch, or aqueduct, as the case may be) in which I intend to divert said water will be
..... (here state size.)

.....
Claimant.

Notice posted....., 191..

Section 1018.—WHEN WORK MUST BE DONE.—

Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, or the survey, road or trail building, necessarily incident thereto, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snows or rain; provided, that if the erection of a dam has been recommended by the California Debris Commission at or near the place where it is intended to divert the water, the claimant shall have sixty days after the completion of such dam in which to commence the excavation or construction of the works in which he intends to divert the water; provided, that whenever any city and county, or any incorporated city or town within this State makes, or has made, or acquires or has acquired any appropriation of any of the waters of this State in accordance with the provision of Section 1415 of this code, it shall not be necessary for such city and county, city or town to commence the work for development of more of the waters so claimed than is actually necessary for the immediate needs of such city and county, city or town; and it shall be held to be a sufficient compliance with the requirements of the law, to the full amount of water stated in the notice posted and recorded, for such city and county, city or town, to within sixty days make the necessary surveys, or within six months to authorize the issuance of municipal bonds, for the construction of the necessary works designed to supply such city and county, city or town, with the water required for immediate use. Any appropriation heretofore made by any such city and county, city or town, in connection with which surveys were at any time made, or an issue of bonds authorized for the construction of any portion of the works necessary for a diversion of any part of the water appropriated, is hereby confirmed to the full amount of water stated in the original notice or notices.

Act of the Legislature, approved May 1, 1911.

Section 1019.—ELECTRICAL POWER.—No water for the generation of electricity or electrical or other power may be appropriated for a longer period than twenty-five years, except by a municipal corporation, other than an irrigation district or a lighting district, or by an irrigation district when such electricity, electrical or other power is for use and distribution only within its own limits, and as subsidiary to and mainly for the purpose of serving and carrying out irrigation, or by a lighting district when such electricity, electrical or other power is for use and distribution only within its own limits.

Act of the Legislature, approved April 8, 1911.

(a) **Water Not Being Used Declared Unappropriated.**—All water or the use of water which has been heretofore appropriated and which has not been put, or which has ceased to be put, to some useful or beneficial purpose, or which is not now in the process of being put to some useful or beneficial purpose with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or such use of water, is hereby declared to be unappropriated.

(b) **State May Fix Rates.**—All appropriations of water or the use of water for generating electricity or electrical or other power shall be subject to the right of the state to regulate and fix the rates of compensation for which such electricity or electrical or other power may be sold, rented or distributed.

(c) **Application for Permit to Make Appropriation of Water.**—Any person, firm, association or corporation hereafter intending to appropriate water or the use of water for the generation of electricity, or of electrical or other power, before commencing the construction or enlargement or extension of any building, power house, ditch, canal or any distributing or controlling works, or performing any work in connection with said appropriation or proposed appropriation, shall make an application in duplicate to the board of control

provided for in this act for a permit to make such appropriation. No person, firm, association or corporation shall wilfully divert or use water or shall wilfully attempt to divert or use water for generating electricity or electrical or other power without first complying with the provisions of this act. The possession or use of water for generating electricity or electrical or other power except when a right to said water or the use thereof shall have been acquired in accordance with law shall be prima facie evidence of such wilful diversion or use or attempted diversion or use of such water.

(d) **Facts to Be Stated in Application.**—Every application for a permit to appropriate water or the use of water for the generation of electricity or of electrical or other power shall set forth the residence, or principal place of business, if the applicant be a corporation, and postoffice address of the applicant, the source of the water or the use of water to be appropriated or used, the nature and amount of the proposed use, the head of and amount of water to be utilized, the uses to which the water and electricity or electrical or other power are to be applied, the nature, the location (which may be changed by permission of the board of control), the character, the estimated capacity, and the estimated cost of the works, and whether the water is to be and will be returned to the stream or source from which it is to be taken and if so at what point on the stream or source it is proposed to return said water to said stream or source. If the application is for the construction of a reservoir for the purpose of storing water to be used for the generation of electricity or of electrical or other power, it shall give the estimated height of the dam and the estimated capacity of the reservoir in addition to the other requirements above set forth. All applications shall be accompanied by such maps and drawings in duplicate and such other data in duplicate as may be prescribed by the board of control, and such accompanying data shall be considered as a part of the application. A true copy of such application without such accompanying data and maps and drawings shall be recorded by the applicant in the

office of the recorder of the county, or city and county, in which the proposed works are to be erected, within ten days after said application is filed with said board.

(e) **Examination of Application by Board of Control.**—Upon receipt of an application under this act it shall be the duty of the board of control immediately to cause to be made an endorsement thereon of the date of its receipt and to keep the duplicate of said application and its endorsement on file as a record of the same. The board of control shall immediately examine the said application after it has been filed. If upon such examination the application is found to be defective, one copy of it and its accompanying data, maps and drawings shall be returned to the applicant for correction or completion, and the date of and reasons for the return thereof shall be endorsed thereon and a record kept of such endorsement in the office of the board of control. No application shall lose its priority of filing on account of such defect; provided, a proper application is filed in the office of the board of control within thirty days of the date of said return to the applicant. It shall be the duty of the board of control within six months to enter an order directing the rejection of such application if after further hearing the public interests shall seem to the board of control so to demand. Applications may be approved for a less amount of water or the use of water than that applied for, if there exist substantial reasons therefor, but in any event shall not be approved for more water or the use of water than can be applied to the use for which application is made under an efficient and economical use thereof.

(f) **Approval or Rejection of Application.**—The approval or rejection of an application shall be endorsed thereon and a record made of such endorsement in the office of the board of control. One copy of the application so endorsed shall be returned immediately to the applicant in person or by registered mail. If said application be approved, the applicant shall immediately record said approved application, together with the endorsement thereon, in the office of the

recorder of the county, or city and county, in which the proposed works are to be constructed, and shall be authorized on receipt of said approval and on recording the same, to proceed with the construction of the necessary works and to take all steps required to apply the water or the use of the water to the purpose of generating electricity or electrical or other power as provided in the approved application, and to perfect the proposed appropriation; provided, however, that no right in or to such water or the use thereof shall vest in or accrue to the said applicant until the final permit is issued as hereinafter provided.

(g) **Construction Work.**—Actual construction work shall begin within six months from the date of the approval of the application and the construction of the work shall thereafter be prosecuted with reasonable diligence in proportion to the magnitude of the undertaking, and if such work is not so commenced and prosecuted the board of control may revoke its approval of the application; and such work shall be completed within a reasonable time as fixed in the permit not to exceed five years from the date of such approval. Upon application of the proposed appropriator the board of control may for good cause extend the time within which such work shall be completed under any permit, but no such extension shall be for a longer period than one year beyond the period fixed in the permit.

Upon the completion of the works for the diversion and application of water or the use of water under this act, the holder of such permit or his assigns shall report such completion to the board of control, and the board of control without delay shall cause to be made a full inspection and examination of the works constructed and a report upon their construction and condition, and whether or not they conform to the terms of the application and permit and are adequate for the purposes intended.

(h) **License to Use Water.**—Upon the receipt of such report, the board shall, if the law has been fully complied

with, and if the work shall have been completed in accordance with the application, issue a license to the applicant or his assigns, allowing him or them to divert and use said water, or so much thereof as may be necessary for the use proposed, for a certain period of time therein specified, but in no case for more than twenty-five (25) years. Licenses granted upon application made under this act for water or the use of water shall be numbered consecutively as to each stream or other source in the order as to the dates when such applications are filed.

(i) **Facts Stated in License.**—Said license shall set forth the name of the licensee, his place of residence, and if a corporation or firm or association, the date of its organization and its principal place of business, the stream or source from which the water is to be diverted or used, the quantity of water the licensee is authorized to divert from the stream or source, the point or points on said stream or source at which said water is to be diverted or used, the location of the proposed works, the period of time for which the water may be used, which in no case shall be for more than twenty-five years, by what means and the purposes for which the licensee is authorized to use the same.

(j) **Rights Vested in Licensee.**—Any license issued as above provided for water or the use of water appropriated under this act shall vest in the licensee the right to the use of the amount of water mentioned therein for the period of time therein set forth, in the manner and for the purpose therein mentioned and not otherwise; provided that such license shall not impair or affect any rights to water or the use of water which shall have become vested prior to the making of the application above provided for.

(k) **Renewal of License.**—Any appropriator of water or the use of water under the provisions of this act for the purpose of generating electricity or electrical or other power, or the successor or assigns of said appropriator, if a renewal or extension of the license herein provided for is desired,

shall, not less than one or more than two years prior to the termination of the license granted as herein provided, notify the board of control that a renewal and extension of such license is desired. The board of control shall thereupon issue to said appropriator a renewal and extension of said license for a fixed period, but in no case for more than a period of twenty-five years from the date of such renewal, in compliance with such laws of the state as shall then be in force regulating the renewal, issuing and granting of any license for water or the use of water for generating electricity or electrical or other power.

(1) **License Not Valid for Excess.**—No license for the appropriation of water or the use of water as herein provided shall be valid as to any excess of the capacity of the works actually constructed.

(m) **License to Store Surplus Waters.**—The board of control may upon application made therefor in the manner provided in this act and upon like procedure, grant to any person, firm, association or corporation a license to divert and store for the purpose of generating electricity or electrical or other power, the surplus waters of any stream during floods or high water or during those portions of the year when such water is not required or being stored for irrigation purposes, and for the purpose of this act all water which is not used during the season of flood or high water is declared to be surplus water.

(n) **Appropriations Subject to Fees.**—All appropriations of water or the use of water for generating electricity or electrical or other power heretofore or hereafter made shall be subject to the right of the state to impose the fees and charges herein provided, and shall also be subject to the right of the state to increase or decrease such fees and charges from time to time thereafter.

(o) **Fees.**—Every person, firm, association or corporation making application for permission to appropriate water or the use of water under this act shall at the time of filing

the said application pay to said board of control a fee of ten dollars. Every person, firm, association or corporation at the time of receiving a license to appropriate water or the use of water as provided in this act shall pay to said board a fee of one hundred dollars, and also shall pay to said board when the said license is issued, and in addition thereto and annually thereafter a charge for each theoretical horse power of the works estimated as follows: For the first one hundred (100) horse power there shall be no charge; and for all above one hundred (100) horse power ten (10) cents for each horse power. All fees collected shall be accounted for at the following regular meeting of the board of control and paid by said board into the general fund of the state treasury within thirty days thereafter.

(p) **Board of Control.**—For the purpose of carrying out the provisions of this act, a board of control, to consist of five persons, is hereby created and established. Three members of said board shall be appointed by the governor for a term of four years; provided, that the members first appointed shall be appointed so that one of them shall go out of office at the end of one year, one at the end of two years, and one at the end of three years. The governor and the state engineer are hereby made ex-officio members of said board of control in addition to the three members appointed by the governor. The appointed members of said board shall receive as compensation for services rendered by them, as such members, the sum of ten (10) dollars per day for each day's services actually rendered. If, however, there shall, hereafter, be created by law, any state board or commission having power to regulate or fix rates to be charged for services rendered, or commodities furnished, by public utilities, or by persons or corporations engaged in public service business, or if any state board or commission now existing shall hereafter have such powers conferred upon it, then the powers and duties of the board of control herein created shall vest in and be exercised by such board or

commission, and said board of control shall thereupon cease to exist.

(q) **Powers of Board.**—The board of control is hereby authorized and empowered to do and perform the acts and things required of it by this act and to adopt rules and regulations necessary to carry out the provisions of this act, and it shall be the duty of the board to provide for the public hearing upon the merits of all applications filed with the board and to prescribe the rules of procedure to be observed at such hearings.

Every member of said board of control is hereby authorized to administer oaths and to cause the production of persons, papers, records and books in all matters of business transacted before said board.

(r) **Annual Reports to Board.**—All persons, firms, associations or corporations generating electricity or electrical or other power by water or the use of water appropriated under the provisions of this act shall keep their plants and systems in proper repair, and shall upon the first day of January after the passage of this act, and annually thereafter, report to said board of control the condition of their plants and distributing systems, the number of kilowatt hours of electricity or electrical or other power generated during each month of said year, the number of kilowatt hours of electricity or electrical or other power rented, sold or distributed during each month of said year, and the names of the persons, firms, associations or corporations to whom said power has been rented, sold or distributed.

(s) **Combinations in Restraint of Trade Prohibited.**—No person, firm, association or corporation appropriating water or the use of water hereunder shall enter into any agreement, combination or trust in restraint of trade contrary to law, and if any of the works owned or operated by any licensee under this act or assign or assigns shall be owned, leased, trusted, possessed or controlled by any device, permanently, temporarily, directly or indirectly, tacitly, or in

any manner whatsoever so that it or they form a part of or in any way effect any combination, or if it or they are in anywise controlled by any combination or conspiracy to limit the output of electricity or electrical or other power, or to increase the price at which electricity or electrical or other power is sold, rented or distributed, or to prevent the lowering of said price, or in restraint of trade with foreign nations, or between two or more states or territories, or with any state or territory in the generation, sale, distribution of electricity or electrical or other power, all rights to the appropriation of water or the use of water shall cease and be forfeited to the people of the state by proceedings instituted in the courts for that purpose by the attorney-general of the state either upon his own initiative or upon demand of the board of control.

(t) **Violation of this Act a Misdemeanor.**—Any violation of this act or of any order or regulation of the board of control is hereby declared to be a misdemeanor, and shall be punished by a fine not exceeding five thousand (5000) dollars, or by imprisonment in the county jail not exceeding one (1) year, or by both such fine and imprisonment.

(u) **Act Not Applicable to Municipal Corporations.**—None of the provisions of this act shall apply to municipal corporations, other than irrigation districts or lighting districts, nor to the use by any irrigation district of water for the generation of electricity, electrical or other power only for use and distribution within its own limits, and as subsidiary to and mainly for the purpose of serving and carrying out irrigation, nor to the use by any lighting district of water for the generation of electricity, electrical or other power only for use and distribution within its own limits.

(v) **Appropriations by Municipal Corporations.**—Municipal corporations, other than irrigation districts and lighting districts, desiring to appropriate water for the generation of electricity, electrical or other power, and all irrigation districts and lighting districts desiring to appropriate water for

the generation of electricity, electrical or other power, and all irrigation districts and lighting districts desiring to appropriate water for the generation of electricity, electrical or other power for the uses hereinabove in this section specified, shall within ten days from the time that they post and record notices of appropriation, as required by law, file with the board of control a notice of said appropriation, together with the name and postoffice address of the appropriator, the source of the water to be appropriated or used, the nature and amount of the proposed use, the head of an amount of water proposed to be utilized, the uses to which the water and power are to be applied, the nature, location, character, estimated capacity and estimated cost of the works, and whether the water is to be and will be returned to the stream or source from which it is to be taken, and if so, at what point on said stream or source. If the appropriation contemplates the construction of a reservoir for the purpose of storing water to be used for the generation of electricity or electrical or other power, the notices filed with the board shall also give the estimated height of the dam and the estimated capacity of the reservoir, in addition to the other requirements above set forth.

Act of the Legislature, approved April 8, 1911.

Section 1020.—FORFEITURE OF CLAIM.—A failure to comply with the law, as to notices, commencement of work, or completion of the work by diligently prosecuting it, will forfeit the right of the claimant to the use of the water, as against a subsequent claimant who does comply with the law.

Civil Code, Section 1419.

Section 1021.—RIPARIAN RIGHTS.—The owner of land upon a stream has a right to the use of water, which is called a riparian right. He is entitled, without making an appropriation under the law, to have the use of water flowing by his land for any purpose to which it can be applied beneficially—for supplying his natural wants, including

the use of the water for the domestic purposes of his home or farm, such as drinking, washing, or cooking, and for his stock. This is what is called a riparian right, and the owner of land upon both navigable and unnavigable streams is called a riparian proprietor. As such, he is entitled to have the stream which washes his land flow in its natural channel, without diminution or alteration. It may be subject to condemnation for public use, but it cannot be condemned for public use without full compensation being made to the riparian proprietor for its loss. And he may insist that the stream shall flow to his land in the usual quantity, at its natural place and height, and that it shall flow off his land to his neighbor below in its accustomed channel and at its usual level. His right to the use of the water is not a mere easement, but is inseparably annexed to the soil itself. It does not in any way depend upon appropriation, but is a part of the land, and goes with the land from owner to owner, as conveyances may be made. He may take the water from its natural channel, and carry it on to other parts of his land, provided he turns it back into the channel again to his neighbor below. However, his use of the water must be reasonable, so as to let it flow on when he is through with it, so that others may also have the benefit of their riparian right in the use of the water, for the natural wants of their proprietors. He must see to it that the surplus, after he uses the water, is returned to the stream, for the use of those below. He is never allowed, as against a lower proprietor, to use all the water of the stream on his own land, unless such use is absolutely necessary for strictly domestic purposes and to furnish drink for man and beast.

Section 1022. — PROTECTION OF RIPARIAN RIGHTS.—The courts of California will protect the riparian proprietor, by issuing an injunction against any one who interferes with his proper use and enjoyment of the water. The courts will also allow him damages for injury to his premises, against any one who deprives him of his use of the water.

Section 1023.—MANNER OF USING WATER.—One making an appropriation of water from a natural stream may make use of any natural or artificial channel available and convenient for the purpose of conducting the water, so long as other persons interested in such conduit do not object, and his appropriation so made will be as effectual as if he had carried it through a ditch or pipe-line made for that purpose and no other. A person making an appropriation of water from a natural stream need not construct any head-gate at the place of diversion, and if a simple cut will accomplish the purpose of diverting the water from the stream, it is, if accompanied with a beneficial use, a good appropriation as against others making a subsequent diversion and use. (Decided by the Supreme Court of California in the case of Lower Tule Ditch Co. vs. Angiolo Water Co., which decision is printed in Volume 86 of the Pacific Reporter, page 1081.)

Section 1024. — WATER RIGHTS ON PUBLIC LAND.—From the earliest times in California it has been customary to divert water on the public lands for mining, agricultural, and other purposes, and this right was, in 1866, confirmed and approved by Act of Congress. Therefore, the occupant of public land who is living on it in good faith has the right, whether the land is surveyed or unsurveyed, to appropriate water flowing in a stream, canyon, or ravine, and take it to his land for agricultural, mining, or domestic purposes. It will make no difference whether he has or has not obtained a legal title to the land he occupies. If he is an occupant of the land, claiming under the laws of the United States, this will be sufficient to entitle him to appropriate water for use on the land. (Decided by the Supreme Court of California in the case of Ely vs. Ferguson, which decision is printed in Volume 91 of the California Reports, page 187.)

Section 1025.—OBTAINING TITLE BY PRESCRIPTION.—A right to the use of water may be obtained by prescription. That is, one who has been continuously using

water, conveyed in a ditch, flume, or aqueduct, for five years, claiming the right as against the world, obtains a title to the water by reason of such possession adverse to others. A party may obtain a prescriptive title to the water of a stream by using it on vacant government land; if a lawful use of the water is made, it makes no difference who is the owner of the land upon which it is used. (Decided by the Supreme Court of California in the case of Southern California Investment Company vs. George Wilshire, which decision is printed in Volume 28, California Decisions, page 80.)

Section 1026.—WATER FOR IRRIGATION.—Under the law of riparian rights, the riparian proprietor has the right to use a reasonable amount of the water of a stream running through his premises for irrigating his riparian land, but he has not the right for that purpose to take all the water which flows in the stream at the point where he diverts it. What is a reasonable amount of water for irrigation is a question that must depend upon the particular circumstances of each case in which it arises, and it is a question which is frequently of difficult solution; but it is settled in California that in no case can a riparian proprietor, for the purpose of irrigation, use all the water of the stream, and thus leave a lower proprietor without any. And while he may use a part of the water of the stream to irrigate his land, the land irrigated must be riparian; that is, the land irrigated must be the land through which the stream flows. He cannot take the water away to other land, although owned by him. He is restricted in the use of the water for irrigation to the land through which the stream flows. (Decided by the Supreme Court of California in the case of Gould vs. Stafford, which decision is printed in Volume 91 of the California Reports, page 146.)

Section 1027.—WATER FOR MINING.—The Statutes of the United States provide: "That whenever, by priority of possession, rights to the use of water for mining have accrued, and the same are recognized and acknowledged

by the local customs, laws, and decisions of courts, the possessors and owners of such vested rights are protected in the same, and the right of way for the construction of ditches and canals, they are hereby acknowledged and confirmed."

Revised Statutes of the United States, Section 2339.

(a)—The California Statute.—In California, the Legislature has provided by law that the owner of a mine is entitled to a right of way through or over other mines, for ditches, canals, or tunnels used in the working of his mine. He may therefore bring water to his mine in a ditch or flume over another mining claim, or, if necessary, in a tunnel through another mine. Of course, if by constructing a ditch, flume, or tunnel, to carry water to a mining claim, damage is done to other property over or through which it passes, the owner of the damaged property must be recompensed for his loss.

Statutes of 1891, page 220.

(b)—First Appropriator Has First Right.—The law about riparian rights does not apply to mining. For mining purposes, the first appropriator has first right. An appropriation of water for mining purposes is made in the same manner as an appropriation of water for other purposes, which has already been stated.

(c)—Miner's Inch of Water.—The standard miner's inch of water, in California, is fixed by law as equivalent or equal to one and one-half cubic feet of water per minute measured through any aperture or orifice.

Statutes of 1901, page 660.

Section 1028.—SUBTERRANEAN WATERS.—A novel and interesting question, involving immense individual and corporation investments, has been before the Supreme Court of California, and received a final determination. It relates to subterranean waters, whether flowing in underground channels, or percolating through the earth and collecting in

a given spot. The dispute occurred in San Bernardino County, and the case of *Katz vs. Walkinshaw* has become celebrated in this State, deciding, as it does, that the right of a land-owner to take and use subterranean, percolating waters, and divert the same from land of an adjoining owner, is limited to a reasonable use in connection with the use of his own land, and does not authorize him to appropriate such waters by artesian wells and sell the water for the irrigation of distant lands, to the detriment of adjoining land-owners. The case has been in the Supreme Court twice, the first decision being written by Judge Temple and the last by Judge Shaw. The Superior Court of San Bernardino County decided the case in favor of the defendant, who had sunk a well on his land, and thereby drew off the water from the well of his neighbor; but the Supreme Court reversed this decision and decided the case in favor of the plaintiff. The following extracts from the opinion prepared by Judge Temple in the Supreme Court will give the interesting and important points involved:

"The action was brought to enjoin defendant from drawing off and diverting water from an artesian belt, which is in part on or under the premises of plaintiffs, and to the water of which they have sunk wells, thereby causing the water to rise and flow upon the premises of plaintiffs and which had constantly so flowed for twenty years before the wrong complained of was committed by defendant. The water is necessary for domestic purposes and for irrigating the lands of plaintiffs, upon which there are growing trees, vines, shrubbery, and other plants, which are of great value to plaintiffs.

"These facts are admitted, and further that defendant is diverting the water for sale, to be used on lands of others distant from the saturated belt from which the artesian water is derived.

"The plaintiffs contend that this sub-surface water constitutes an underground stream, and that plaintiffs are riparian thereto, and as such riparian owners they are seeking relief in this case.

"The defendant denies that she is taking or diverting water from an underground stream or water-course, and alleges that all the water which arises, in the artesian wells on her premises, and which she is selling, is percolating water, and is parcel of her premises, and her property.

"In effect, therefore, while denying that she is doing any act of which plaintiffs can complain, she really only denies that she is diverting water from an underground water-course, and asserts her right to dispose of the water in the manner alleged, because it is percolating water, not confined to a definite water-course.

"The so-called artesian belt includes several square miles of territory. It is a large accumulation of earth upon the base of very high mountains, and is composed of detritus of varying quantity and material, with no regular stratification. Wells have been sunk at least to the depth of 750 feet, but no bed-rock has been found. It has quite an incline from the mountain, and is from 700 to 1,500 feet above sea level. Mr. F. C. Finkle, a civil engineer, was the chief witness for the plaintiffs, and testified both as to facts palpable to the senses, and as an expert. He says, the saturated land is fed: First, by the underflow from the numerous ravines, canyons, and streams which enter the valley from the mountains; and, secondly, by the rain and flood-water upon and absorbed upon the slope and between the artesian belt and the mountains. This water percolating down into the soil, and constantly pressed forward by water accumulating, finally gets under partially impervious earth, where it is held under sufficient pressure to create the artesian belt. The banks of this supposed sub-surface stream, the witness thought, were on the west, 'a cemented dyke which runs throughout the valley, and the eastern boundary of it is the clay bank or dyke at the south side of the Santa Ana River.' Within these limits many ravines enter from the mountains, some of them carrying at times great quantities of water, much of which has been appropriated and carried off in pipes or cemented aqueducts.

"It is evident that if there is any flow to this underground body of water thus held under pressure, it is by percolation. The witness stated that the process was the same the world over. The lower lands are saturated from above. 'It is done by saturation from the rainfalls and the floods, and percolations through voids in the soil.'

"It is quite manifest that this body (if it can be so styled) of percolating water cannot be called an underground water-course to which riparian rights can attach, unless we are prepared to abolish all distinction between percolating water and the water flowing in streams with known or ascertainable banks, which confine the water to definite channels. All rain water which falls upon the hills and mountains sides which does not flow off at once, as surface water, is absorbed and percolates down in the same way to the valley below. No doubt limits can be found to every such flow, as in this case. The distinction is well established and, in some respects, different rules of law applied to the two cases. The plaintiffs therefore cannot establish their claims upon the theory of an underground water-course to which they are riparian.

"But the appellants contend that, though they are not riparian to an underground water-course, and although the saturated belt carries only percolating water, still they are entitled to the injunction prayed for.

"It is obvious, at once, that the analogy between the right to remove sand and gravel from the land for sale, and to remove and sell percolating water is not perfect. If we suppose a saturated plain, one may remove and sell the sand and gravel from his land without affecting or diminishing the sand and gravel on the lands of his neighbors. If the water on his lands is his property, then the water in the soil of his neighbors is their property. But when he drains out and sells the water on his land, he draws to his land and also sells water which is the property of his neighbor. And the effect is similar in other respects. By pumping out the water from his lands he can, perhaps, deprive his neighbors of water for domestic uses, and, in fact, render their land valueless. In short, the members of the community, in

the case supposed, have a common interest in the water. It is necessary for all, and it is an anomaly in the law if one person can for his individual profit destroy the community and render the neighborhood uninhabitable.

"We have derived our law, in respect to subterranean waters, as in other respects, mostly from England, but in regard to this matter the first cases are quite modern. Even yet the text-books on water rights have but little to say upon the subject of percolating water. Such law as has been made upon the subject comes from countries and climates where water is abundant, and its conservation and economical use of little consequence as compared with a climate like Southern California. The learned counsel for appellants state in their brief, that water at San Bernardino is worth \$1,000 per inch of flow. Percolating water or water held in the earth, is the main source of supply for domestic uses, and for irrigation, without which most lands are unproductive. It is also stated that speculators are seeking to appropriate the percolating water, by getting title to some part of a water shed or slope, and by running canals and tunnels, and by sinking, to obtain water for sale. It is asserted that the lands naturally made moist by percolating water are very productive, and were first settled upon, and have been most highly improved; and he asks whether these lands are to be converted into deserts, because speculators may pump and carry away to some distant locality the sub-surface waters which render the land fertile. Certainly no such case as this has come before a court, or could well exist, in England, or in the Eastern States.

"No doubt the land proprietor owns the water which is parcel of his land, and may use it as he pleases, regard being had to the rights of others. It is not unreasonable that he should dig wells in order to have the fullest enjoyment and usefulness of his estate, or for pleasure, trade, or whatever else the land as land may serve. But to fit it up with wells and pumps of such persuasive and potential reach that from their base the defendant can tap the water stored in the plaintiff's land, and in all the region thereabout, and lead

it to his own land, and by merchandising it prevent its return, is, however reasonable it may appear to the defendant and its customers, unreasonable as to the plaintiff, and others whose lands are thus clandestinely sapped, and their value impaired."

A rehearing was granted by the Supreme Court, and on November 28th, 1903, another and final decision was made by the full court, and the former opinion given by Judge Temple was approved and sustained in every particular. Upon the final determination of the suit, Judge Shaw prepared the opinion. It is extremely interesting and valuable. Following are extracts showing the principal points in Judge Shaw's opinion:

"A rehearing was granted in this case for the purpose of considering more fully, and by the aid of such additional arguments as might be presented by persons not parties to the action, but vitally interested in the principle involved, a question that is novel and of the utmost importance to the application to useful purposes of the waters which may be found in the soil.

"Petitions for rehearing were presented not only in behalf of the defendant, but also on behalf of a number of corporations engaged in the business of obtaining water from wells and distributing the same for public and private use within this State, and particularly in the southern part thereof. Able and exhaustive briefs have been filed on the rehearing. The principle decided by the late Justice Temple in the former opinion, and the course of reasoning by which he arrived at the conclusion, have been attacked in these several briefs and petitions with much learning and acumen. It is proper that we should here notice some of the objections thus presented.

"Many arguments, objections, and criticisms are presented in opposition to the rules and reasoning of the former opinion. It is contended that the rule that each land-owner owns absolutely the percolating waters in his land, with the right to extract, sell, and dispose of them as he chooses, regardless

of the results to his neighbor, is part of the common law, and as such has been adopted in this State.

"The true doctrine is that the common law by its own principles adapts itself to varying conditions, and modifies its own rules so as to serve the ends of justice under the different circumstances, a principle adopted into our code by Section 3510, Civil Code: 'When the reason of a rule ceases, so should the rule itself.' Whenever it is found that, owing to the physical features and character of this State, and the peculiarities of its climate, soil, and productions, the application of a given common law rule by our courts tends constantly to cause injustice and wrong, rather than the administration of justice and right, then the fundamental principles of right and justice on which that law is founded, and which its administration is intended to promote, requires that a different rule should be adopted, one which is calculated to secure persons in their property and possessions, and to preserve for them the fruits of their labors and expenditures. The question whether or not the rule contended for is a part of the common law applicable to this State, depends on whether it is suitable to our conditions under the rule just stated.

"It is necessary, therefore, to state the conditions existing in many parts of this State which are different from those existing where the rule had its origin.

"In a large part of the State, and in almost all the southern half of it, particularly south of the Tehachapi range of mountains, aside from grains, grasses, and some scant pasturage, there is practically no production by agriculture, except by means of artificial irrigation. In a few places favored by nature, crops are nourished by natural irrigation, due to the existence underneath the ordinary soil of a saturated layer of sand or gravel, but these places are so few that they are of no consequence in any general view of the situation. Irrigation in these regions has always been customary, and under the Spanish and Mexican governments it was fostered and encouraged. Even in the earlier periods of the settlement of the country, after its acquisition by the

United States, and while the population was sparse and scattered compared to the present time, the natural supply of water from the surface streams, as diverted and applied by the crude and wasteful methods then used, was not considered more than was necessary. As the population increased, better methods of diversion, distribution, and application were adopted, and the streams were made to irrigate a very much larger area of land. While this process was going on, a series of wet years augmented the streams, and still more land was put under the irrigating systems. Recently there has followed another series of very dry years, which has correspondingly diminished the flow of the streams. After this period began, it was soon found that the natural streams were insufficient. The situation became critical, and heavy loss and destruction from drouth were imminent. Still the population continued to increase, and with it the demand for more water to irrigate more land. Recourse was then had to the underground waters. Tunnels were constructed, more artesian wells bored, and finally pumps driven by electric or steam power were put into general use to obtain sufficient water to keep alive and productive the valuable orchards planted at the time when water was supposed to be more abundant. The geological history and formation of the country is peculiar. Deep borings have shown that almost all of the valleys and other places where water is found abundantly in percolation were formerly deep canyons or basins, at the bottoms of which anciently there were surface streams or lakes. Gravel, boulders, and, occasionally, pieces of driftwood have been found near the coast far below tide level, showing that these sunken stream-beds were once high enough to discharge water by gravity into the sea. These valleys and basins are bordered by high mountains, upon which there falls the more abundant rain. The deep canyons or basins in course of ages have become filled with the washings from the mountains, largely composed of sand and gravel, and into this porous material the water now running down from the mountains rapidly sinks and slowly moves through the lands by the process usually

termed percolation, forming what are practically underground reservoirs. It is the water thus held or stored that is now being taken to eke out the supply from the natural streams. In almost every instance of a water supply from the so-called percolating water, the location of the well or tunnel by which it is collected is in one of these ancient canyons or lake basins. Outside of these, there is no percolating water in sufficient quantity to be of much importance in the development of the country, or of sufficient value to cause serious litigation. It is usual to speak of the extraction of this water from the ground as a development of a hitherto unused supply. But it is not yet demonstrated that the process is not in fact, for the most part, an exhaustion of the underground sources from which the surface streams and other supplies previously used have been fed and supported. In some cases this has been proven by the event. The danger of exhaustion in this way threatens surface streams as well as underground percolations and reservoirs. Many water companies, anticipating such an attack on their water supply, have felt compelled to purchase, and have purchased, at great expense, the lands immediately surrounding the stream or source of supply, in order to be able to protect and secure the percolations from which the source was fed. Owing to the uncertainty in the law, and the absence of legal protection, there has been no security in titles to water rights. So great is the scarcity of water under the present demands and conditions that one who is deprived of water which he has been using has usually no other source at hand from which he can obtain another supply.

"The water thus obtained from all these sources is now used with the utmost economy, and is devoted to the production of citrus and other extremely valuable orchard and vineyard crops. The water itself, owing to the tremendous need, the valuable results from its application, and the constant effort to plant more orchards and vineyards to share in the great profits realized therefrom, has become very valuable. In some instances it has been known to sell at the rate of fifty thousand dollars for a stream flowing

at the rate of one cubic foot per second. Notwithstanding the great drain on the water supply, the economy in the distribution and application, and the much larger area of land thereby brought under irrigation, there still remain large areas of rich soil which are dry and waste for want of water. This abundance of land, with the scarcity and high price of water, furnishes a constant stimulus to the further exhaustion of the limited amount of underground water, and a constant temptation to invade sources already appropriated. The charms of the climate have drawn, and will continue to draw, immigrants from the better classes of the Eastern States, composed largely of men of experience and means, energetic, enterprising, and resourceful. With an increasing population of this character, it is manifest that nothing that is possible to be done to secure success will be left undone, and that there must ensue in years to come a fierce strife, first to acquire and then to hold every available source of water.

"It is scarcely necessary to state the conditions existing in other countries referred to, to show that they are vastly different from those above stated. There the rainfall is abundant, and water, instead of being of almost priceless value, is a substance that in many instances is to be gotten rid of rather than preserved. Drainage is there an important process in the development of the productive capacity of the land, and irrigation is unknown. The lands that from their situation in this country are classed as damp lands would in those countries be either covered by lakes or would be swamps and bogs. If one is deprived of water in those regions, there is usually little difficulty in obtaining a sufficient supply nearby, and at small expense. The country is interlaced with streams of all sizes, from the smallest brooklet up to large, navigable rivers, and the question of the water supply has but little to do with the progress or prosperity of the country.

"It is clear also that the difficulties arising from the scarcity of water in this country are by no means ended, but, on the contrary, are probably just beginning. The application

of the rule contended for by the defendants will tend to aggravate these difficulties rather than solve them. Traced to its true foundation, the rule contended for is simply this: 'that owing to the difficulties the courts will meet in securing persons from the infliction of great wrong and injustice by the diversion of percolating water, if any property right in such water is recognized, the task must be abandoned as impossible, and those who have valuable property acquired by and dependent on the use of such water must be left to their own resources to secure protection for their property from the attacks of their more powerful neighbors, and, failing in this, must suffer irretrievable loss; that might is the only protection.

" 'The good old rule
Sufficeth them, the simple plan,
That they should take who have the power,
And they should keep who can.'

" 'The field is open for exploitation to every man who covets the possessions of another, or the water which sustains or preserves them, and he is at liberty to take that water if he has the means to do so, and no law will prevent or interfere with him, or preserve his victim from the attack.' THE DIFFICULTIES TO BE ENCOUNTERED MUST BE INSURMOUNTABLE TO JUSTIFY THE ADOPTION OR CONTINUANCE OF A RULE WHICH BRINGS ABOUT SUCH CONSEQUENCES.

"We do not see how the doctrine contended for by defendant could ever become a rule of property of any value. Its distinctive feature is the proposition that no property rights exist in such waters except while they remain in the soil of the land-owner; that he has no right either to have them continue to pass into his land as they would under natural conditions, or to prevent them from being drawn out of his land by an interference with natural conditions on neighboring land.

"It is apparent that the parties who have asked for a reconsideration of this case, and other persons of the same

class, if the rule for which they contend is the law, or no-law, of the land, will be constantly threatened with danger of utter destruction of the valuable enterprises and systems of water works which they control, and that all new enterprises of the same sort will be subject to the same peril. They will have absolutely no protection in law against others having stronger pumps, deeper wells, or a more favorable situation, who can thereby take from them unlimited quantities of the water, reaching to the entire supply, and without regard to the place of use. We cannot conceive how a doctrine offering so little protection to the investments in and product of such enterprises, and offering so much temptation to others to capture the water on which they depend, can tend to promote developments in the future or preserve those already made, and, therefore, we do not believe that public policy or a regard for the general welfare demands the doctrine. An ordinary difference in the conditions would scarcely justify the refusal to adopt a rule of the common law, or one which has been so generally supposed to exist; but where the differences are so radical as in this case, and would tend to cause so great a subversion of justice, a different rule is imperative.

"The doctrine of reasonable use, on the other hand, affords some measure of protection to property now existing, and greater justification for the attempt to make new developments. It limits the right of others to such amount of water as may be necessary for some useful purpose in connection with the land from which it is taken. If, as is claimed in the argument, such water-bearing land is generally worthless except for the water which it contains, then the quantity that could be used on the land would be nominal, and injunctions could not be obtained, or substantial damages awarded, against those who carry it to distant lands. So far as the active interference of others is concerned, therefore, the danger to such undertakings is much less, and the incentive to development much greater, from the doctrine of reasonable use than from the contrary rule. No doubt there will be inconvenience from attacks on the title to waters appropriated

for use on distant lands made by persons who claim the right to the reasonable use of such waters on their own lands. Similar difficulties have arisen and now exist with respect to rights in surface streams, and must always be expected to attend claims to rights in a substance so movable as water. But the courts can protect this particular species of property in water as effectually as water rights of any other description.

"It may, indeed, become necessary to make new applications of old principles to the new conditions; and in view of the novelty of the doctrine, and the scope of the argument, it is not out of place to indicate to some extent how it should be done, although otherwise it would not be necessary to the decision of the case. The controversies arising will naturally divide into classes.

"There will be disputes between persons or corporations claiming rights to take such waters from the same strata or source for use on distant lands. There is no statute on this subject, as there now is concerning appropriations of surface streams, but the case is not without precedent. When the pioneers of 1849 reached this State, they found no laws in force governing rights to take waters from surface streams for use on non-riparian lands. Yet it was found that the principles of the common law, although not previously applied to such cases, could be adapted thereto, and were sufficient to define and protect such rights under the new conditions. The same condition existed with respect to rights to mine on public land, and a similar solution was found. The principles which, before the adoption of the Civil Code, were applied to protect appropriations and possessory rights in visible streams will, in general, be found applicable to such appropriations of percolating waters, either for public or private use, and will suffice for their protection as against other appropriators. Such rights are usufructuary only, and the first taker who with diligence puts the water in use will have the better right. And in ordinary cases of this character the law of prescriptive titles and rights and the statute of limitations will apply.

"In controversies between an appropriator for use on distant land and those who own land overlying the water-bearing strata, there may be two classes of such land-owners; those who have used the water on their land before the attempt to appropriate, and those who have not previously used it, but who claim the right afterwards to do so. Under the decision in this case the rights of the first class of land-owners are paramount to that of the one who takes the water to distant land; but the land-owner's right extends only to the quantity of water that is necessary for use on his land, and the appropriator may take the surplus. As to those land-owners who begin the use after the appropriation, and who, in order to obtain the water must restrict, or restrain, the diversion to distant lands or places, it is perhaps best not to state a positive rule. Such rights are limited at most to the quantity necessary for use, and the disputes will not be so serious as those between rival appropriators.

"Disputes between overlying land-owners, concerning water for use on the land, to which they have an equal right, in cases where the supply is insufficient for all, are to be settled by giving to each a fair and just proportion. And here again we leave for future settlement the question as to the priority of rights between such owners who begin the use of the waters at different times. The parties interested in the question are not before us.

"In addition there are some general rules to be applied. In cases involving any class of rights in such waters, preliminary injunctions must be granted, if at all, only upon the clearest showing that there is imminent danger of irreparable and substantial injury, and that the diversion complained of is the real cause. Where the complainant has stood by while the development was made for public use, and has suffered it to proceed at large expense to successful operation, having reasonable cause to believe it would affect his own water supply, the injunction should be refused and the party left to his action for such damages as he can prove. If a party makes no use of the water on

his own land, or elsewhere, he should not be allowed to enjoin its use by another who draws it out, or intercepts it, or to whom it may go by percolation, although, perhaps, he may have the right to a decree settling his right to use it when necessary on his own land, if a proper case is made.

"The objection that this rule of correlative rights will throw upon the court a duty impossible of performance, that of apportioning an insufficient supply of water among a large number of users, is largely conjectural. No doubt cases can be imagined where the task would be extremely difficult, but if the rule is the only just one, as we think has been shown, the difficulty in its application in extreme cases is not a sufficient reason for abandoning it and leaving property without any protection from the law.

"It does not necessarily follow that a rule for the government of rights in percolating water must also be followed as to underground seepages or percolations of mineral oil. Oil is not extracted for use in agriculture, or upon the land from which it is taken, but solely for sale as an article of merchandise, and for use in commerce and manufactures. The conditions under which oil is found and taken from the earth in this State are in no important particulars different from those present in other countries where it is produced. There is no necessary parallel between the conditions respecting the use and development of water and those affecting the production of oil. Whether in a contest between two oil producers concerning the drawing out by one of the oil from under the land of the other we should follow the rule adopted by the courts of other oil-producing States, or apply a rule better calculated to protect oil not actually developed, is a question not before us and which need not be considered." (Decided by the Supreme Court of California in the case of *Katz vs. Walkinshaw*, which decision is printed in Volume 26 of California Decisions, page 820.)

Section 1029.—WATER COMPANIES.—Water companies are incorporated under the general laws applying to corporations in California, to supply cities and towns

with water. The law provides, however, that no corporation formed to supply any city and county, or city or town, with water must do so unless previously authorized by an ordinance, or unless it is done under a contract; that notwithstanding any such contract, the municipality shall retain the right to regulate the rate to be charged for water; that no exclusive right shall be granted to any water company; and that no contract or franchise shall be made for a term exceeding fifty years.

Civil Code, Section 548.

(a)—Water in Case of Fire.—The means of extinguishing fires in a city or town, the fire apparatus and the fire company, are under the direction and control of the municipality. And a water company, as a condition of the privilege granted to it to supply the inhabitants with water, must supply the municipality with water to the extent of its means in case of fire, free of charge.

Civil Code, Section 545.

(b)—Water Rates.—The Board of Supervisors of a city and county, or the Board of Trustees of a city or town, are compelled to annually fix the rates to be charged and collected by any water company supplying water to the inhabitants or the municipality. The rates thus fixed hold good for one year.

General Laws of California, page 1268.

(c)—Duty to Furnish Water.—All corporations formed to supply water to cities or towns must furnish pure, fresh water to all the inhabitants for domestic purposes, so long as the supply permits, at reasonable rates, and without distinction of persons, upon proper demand therefor. If a water company refuses to supply an inhabitant of a town with water, upon demand and tender of the charge, the company may be compelled to do so, by a suit in the Superior Court.

Civil Code, Section 549.

(d)—Water Company Not Liable for Loss by Fire.—A very important decision was made by the Supreme Court

of California, in February, 1904, the first case of the kind in the United States. A fire occurred in the town of Ukiah, and at the time, through the negligence of the water company, there was not sufficient water in the mains to extinguish it, or to keep it from spreading. A part of the Town Hall and other city property was destroyed. The town sued the water company for damages. On appeal to the Supreme Court, the decision was in favor of the water company, the Court holding that where a water company furnishes water to a municipality for general fire purposes, it cannot be held liable for the value of property destroyed by fire, although the loss may be due to the negligence of the company. A water company is not an insurer against loss by fire. To be liable at all, in any event, for loss of property by fire, there would have to be an express contract between the owner and the company by which the latter agreed to pay for certain property, if destroyed by fire through its failure to supply water. A franchise to supply water for general fire purposes does not create such contract, and a water company is not liable in California for loss by fire. (Decided by the Supreme Court of California in the case of Town of Ukiah vs. Ukiah Water and Improvement Company, which decision is printed in Volume 27 of the California Decisions, page 353.)

(e)—Water Rates Must be Reasonable.—The rates fixed annually must be reasonable, sufficient in amount to afford the water company a fair and just compensation for the services rendered by it in furnishing water to the city and its inhabitants. But in making an estimate of what will be a fair rate, the city cannot include interest on the company's indebtedness, nor the sum the plant will depreciate annually aside from the sum requisite for its maintenance and repair. (Decided by the Supreme Court of California in the case of Redlands Domestic Water Co. vs. City of Redlands, which decision is printed in Volume 121 of the California Reports, page 365.)

(f)—Damages for Failure to Supply Water.—In an action for the failure of a water company to furnish plaintiff with water, plaintiff cannot recover the profits he would have realized from crops that he would have raised had the water been furnished by defendant, less the cost of planting, etc., as such profits are too remote and speculative; but the proper damages are the difference between the rental value of the land with water and its rental value without it. (Decided by the Supreme Court of California in the case of *Crow vs. San Joaquin Canal Co.*, which decision is printed in Volume 130 of the California Reports, page 309.)

(g)—Duty to Fix Reasonable Rates Can be Compelled.—Where a city Board have arbitrarily, without investigation, and without any exercise of judgment or discretion, fixed water rates, without any reference to what they should be, without reference either to the expense necessary to furnish water or to what is a fair and reasonable compensation therefor, so as to render it impossible to furnish water without loss, and so low as to amount to a practical confiscation of the property invested in the business, it is within the jurisdiction of a court of equity to set aside such ordinance and direct the Board to fix fair and reasonable rates. (Decided by the Supreme Court of California in the case of *Spring Valley Water Works vs. City and County of San Francisco*, which decision is printed in Volume 82 of the California Reports, page 286.)

Section 1030.—POLLUTION OF WATER.—The courts will interfere to prevent the pollution of the waters of a stream, from deposits of offensive matter. For instance, where there are lower riparian owners, one has no right to pollute the waters of a stream by maintaining a cow stable and hog pen on its banks, but must keep his stock at a reasonable distance away from the stream. (Decided by the Supreme Court of California in the case of *People vs. Elk River Mill Co.*, which decision is printed in Volume 107 of the California Reports, page 221.)

Section 1031.—CONDEMNATION OF WATER FOR PUBLIC USE.—The riparian owner's property in the water of a stream may be condemned for public use; as, to supply the inhabitants of a city or town. But upon any such condemnation, which is by a suit in the Superior Court, the judgment will direct the payment to the owner of the value of the water to him, and such damages as he may sustain from being deprived of the water. This is done as a compensation to him for the loss of his riparian rights. The amount of damages which will justly compensate for the taking of the water for public use will be determined in each case by a jury selected for the purpose.

Section 1032.—ARTESIAN WELLS.—The Legislature of 1907 passed a law to prevent the waste of water from artesian wells. This law provides that any artesian well which is not capped, equipped, or furnished with such mechanical appliance as will readily and effectively prevent the flow of any water therefrom is to be deemed a public nuisance. The owner, tenant, or occupant of land upon which an artesian well is situated, who causes or permits a waste of water therefrom, is guilty of a misdemeanor. The water must not be allowed to run from the well into any river, creek, or other natural water course or channel, or into any bay or pond, or into street, road or highway, unless thereafter taken out and used for the beneficial purposes of irrigation of land or domestic use; and whenever water from an artesian well is used to irrigate land, not more than five per cent of it must be allowed to escape. The punishment for wasting water from an artesian well, or for failure to keep the well capped and protected, is by a fine of not less than \$25 nor more than \$500, or imprisonment in the county jail for a period of not more than six months, or both such fine and imprisonment.

Act of the Legislature, approved March 6, 1907.

Act of the Legislature, approved March 25, 1909.

Section 1033.—FLOOD WATERS.—When usually recurring floods or freshets are accustomed to swell the banks of a river beyond the low water mark of dry seasons and overflow them, but such waters flow in a continuous body with the rest of the water in the stream and along well-defined boundaries, they constitute a single natural watercourse. It is immaterial that the boundaries of such stream vary with the seasons or that they do not consist of visible banks. It is only necessary that there be natural and accustomed limits to the channel. Water flowing under such circumstances as these, notwithstanding they may consist of a large expanse of water on either side of the main channel, constitute but a single watercourse, and riparian rights pertain to the whole of them. (Decided by the Supreme Court of California, in the case of *Miller & Lux vs. Madera Canal and Irrigation Company*, which decision is printed in Volume 34 of *California Decisions*, page 339.)

PART X.

ADMINISTRATION OF ESTATES OF DECEASED PERSONS.

Section 1034.—SETTLEMENT OF ESTATES.—Of interest to all is the subject of the administration and settlement of estates in the State of California. Under this head will be shown the various steps to be taken in the appointment of executors or administrators, the management of the property of an estate, the selling of property under orders of the Court, the rights of heirs and legatees, and the final settlement and distribution.

Section 1035.—EXECUTORS AND ADMINISTRATORS.—An executor is appointed where there is a will, and is either appointed by the Court or named in the will.

An administrator is appointed by the Court where there is no will.

Authority to an executor is given by an appointment of the Superior Court, and called Letters Testamentary.

Authority to an administrator is given by the same Court, and called Letters of Administration.

Section 1036.—WHERE LETTERS WILL BE GRANTED.—Letters testamentary to an executor, or letters of administration to an administrator, must be granted, (1) in the county of which deceased was a resident at the time of his death, no matter where he died; or, (2) in the county in which he died, leaving property in that county, and not being a resident of the State; or, (3) in the county in which any part of his estate may be, when he dies out of this State and was not a resident here at the

time of his death; or, (4) in the county in which any part of the estate may be, the decedent not being a resident of the State, and not leaving estate in the county in which he died; or, (5) in all other cases, in the county where application for letters is first made.

When the estate of the decedent is in more than one county, he having died out of the State, and not having been a resident thereof at the time of his death, or being such non-resident, and dying within the State, and not leaving estate in the county where he died, the Superior Court of that county in which application is first made for letters testamentary or of administration has exclusive jurisdiction of the settlement of the estate.

Code of Civil Procedure, Sections 1294, 1295.

Section 1037.—PROOF OF WILL.—Any person having a will in his possession must produce and deliver it to the Superior Court, or the executor named in the will, within thirty days after he receives information that the maker is dead; and if he fails to do this he will be responsible for all damages sustained by any one thereby.

Code of Civil Procedure, Section 1298.

Section 1038.—WHO MAY PETITION FOR PROBATE OF WILL.—Any executor, devisee, or legatee named in any will, or any other person interested in the estate, may, at any time after the death of the testator, petition the Superior Court to have the will proved.

Code of Civil Procedure, Section 1299.

Section 1039.—WHEN EXECUTOR FORFEITS RIGHT TO LETTERS.—If the person named in a will as executor wilfully fails, for thirty days after he has knowledge of the death of the testator and that he is named as executor, to petition the proper court for the probate of the will, he will forfeit his rights as executor under the will.

Code of Civil Procedure, Section 1301.

Section 1040.—EXECUTOR MAY DECLINE TO ACT.—An executor named in a will may decline to act, by filing a written notice that he renounces his appointment and declines to act as such, at the same time that he files the will.

Section 1041.—PROOF OF WILL.—When a will is presented for probate, the Superior Court will hear the proofs and issue a certificate of probate. The persons who signed the will as witnesses are examined as to their knowledge of its execution, and to show that it is really the will of the testator.

When one of the witnesses to a will is examined, and the others are dead or insane, or their residence unknown, other testimony, of the handwriting of the testator, and other circumstances, will be taken sufficient to prove that the instrument produced is really the last will and testament of the deceased.

If all the witnesses to the will are dead, or insane, or not residing in the county, the Court will allow the will to be proved by other evidence—the handwriting of the testator, the surrounding circumstances, the handwriting of the subscribing witnesses, etc.

Code of Civil Procedure, Section 1315.

When a will is presented which is all in the handwriting of the testator, an olographic will, it will be proved by the testimony of persons who know his handwriting.

Section 1042.—RECORDING WILL.—The will and a certificate of the proof thereof must be filed and recorded by the clerk of the court.

Code of Civil Procedure, Section 1318.

Section 1043.—PROOF OF LOST OR DESTROYED WILL.—The Superior Court has power to take proof of a will, although the paper itself be lost or destroyed. But no will can be proved as a lost or destroyed will, unless the

proof shows that the will was in existence at the time of the death of the testator, or was fraudulently or by public calamity destroyed in his life-time; provided, if the testator be committed to any state hospital for the insane, and after such commitment his will is destroyed by public calamity, and the testator is never restored to competency, then after his death the will may be probated as though it were in existence at the time of his death. The provisions of a lost or destroyed will must be clearly and distinctly proved by at least two credible witnesses.

Code of Civil Procedure, Section 1339.

Section 1044.—PROOF OF FOREIGN WILL.—Wills probated in any other State or Territory of the United States, or in any foreign country or state, are admitted to probate in this State on the production of a copy and the original record of probate in another country.

Section 1045.—LETTERS TESTAMENTARY.—After probate of a will, letters testamentary will be granted to the persons therein named as executors. If there are two or more executors named in the will, and some decline to act, letters will be granted to those who remain.

Any person interested in a will may file objections in writing to the granting of letters testamentary to any of the persons named as executors, and the objections will be heard and determined by the court.

If the executor named in the will be a minor or absent from the State, letters will be granted to some other person, who will hold the trust until the executor named in the will becomes of age or returns to the State. If two executors are named in the will, and one of them is a minor or absent from the State, the one who can qualify will act as executor alone until such time as the other becomes of age or returns to the State. The latter will then have the right to act as joint executor.

Code of Civil Procedure, Sections 1349, 1354, 1355.

Section 1046.—REVOCATION OF LETTERS.—If an executor or administrator becomes of unsound mind, or is convicted of felony or infamous crime, or becomes a habitual drunkard, or mismanages or wastes the estate, he will be removed by the Superior Court and another will be appointed in his place.

Section 1047.—MARRIED WOMAN OR CORPORATION MAY ACT.—A married woman may act as executrix of a will, or as administratrix of an estate.

A corporation may act as executor or administrator, if authorized by its articles of incorporation so to do.

Code of Civil Procedure, Sections 1348, 1350, 1352.

Section 1048.—LETTERS OF ADMINISTRATION. If a person dies without making a will, the Superior Court will grant letters of administration of his estate. If a person dies leaving a will, but the will does not name any executor, the court will appoint an administrator, called an "administrator with the will annexed," who will have power to carry out the provisions of the will in the same manner as he would if named in the will.

Section 1049.—WHO ARE ENTITLED TO LETTERS OF ADMINISTRATION.—The persons entitled to letters of administration are as follows:

- (1) The surviving husband or wife, or some competent person whom he or she may request to have appointed;
- (2) The children;
- (3) The father and mother;
- (4) The brothers;
- (5) The sisters;
- (6) The grandchildren;
- (7) The next of kin entitled to share in the distribution of the estate;
- (8) The public administrator;
- (9) The creditors;
- (10) Any person legally competent.

If the deceased was a member of a partnership at the time of his death, the surviving partner cannot be appointed administrator of the estate.

Act of the Legislature, in effect May 18, 1907.

Section 1050.—WHO ARE INCOMPETENT TO ACT AS EXECUTOR OR ADMINISTRATOR.—A person may be entitled to letters of administration, as provided in the preceding section, and at the same time be incompetent for personal reasons. For the law provides that in the following cases the persons otherwise entitled must not be appointed: (1) When the person is under the age of majority; or, (2) has been convicted of an infamous crime; or, (3) when he is adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity.

Code of Civil Procedure, Sections 1350, 1369.

Section 1051.—OATH OF EXECUTOR OR ADMINISTRATOR.—The executor or administrator must take and subscribe an oath, that he will perform, according to law, the duties of his trust. This oath is in writing and is recorded by the clerk of the court with the letters of administration.

Code of Civil Procedure, Section 1387.

Section 1052.—BOND OF EXECUTOR OR ADMINISTRATOR.—Executors or administrators in the State of California must give a bond, for the faithful discharge of their duties, in an amount equal to twice the value of the personal property belonging to the estate, and twice the probable value of the rents, profits, and issues of the real property. The court ascertains these values by examining on oath the party applying for letters, or any other person. The bond must be signed by two or more sureties, to be approved by the judge of the court.

Code of Civil Procedure, Section 1388.

An additional bond must be given whenever the sale of any real estate is to be made by order of the court; but no additional bond is necessary when it appears that the amount of the bond already given is twice the value of the personal property remaining in or that may come into the possession of the executor or administrator (including the annual rents, profits, and issues of the real estate), and twice the probable amount to be realized on the sale of the real estate ordered to be sold.

Code of Civil Procedure, Section 1389.

Section 1053.—SEPARATE BONDS.—When two or more persons are appointed executors or administrators, the Court must require and take a separate bond from each of them.

Code of Civil Procedure, Section 1391.

Section 1054.—WHEN EXECUTOR MAY ACT WITHOUT BONDS.—A will may expressly provide that the executor named in it shall act without giving bonds. Where a will does so provide, the executor will have power to administer the estate, including the sale of property, without giving any bonds whatever. If the estate is not managed properly, however, the Court has power to demand a bond of the executor, even where the will declares that no bond shall be given. It is the duty of the Court, no matter what the provisions of the will may be, to see that the estate is properly managed, without waste or unnecessary or wilful losses.

Code of Civil Procedure, Section 1396.

Section 1055.—SPECIAL ADMINISTRATOR.—When there is delay in application for or the granting of letters to an executor or administrator, or when no sufficient bond is filed, or when an executor or administrator dies or is suspended or removed, the Court may appoint a special administrator, to act for the time being, and whose duty it shall be to take charge of and preserve the estate until

such time as a regular executor or administrator shall be appointed and qualified to act. The special administrator must give a bond in the same manner as other administrators.

Code of Civil Procedure, Section 1411.

Section 1056.—RELEASE OF BONDSMEN.—The bondsmen of an executor or administrator may be released by the court. When a surety of any executor or administrator desires to be released from the bond, and from future responsibility, he must make an application therefor to the Superior Court. The court will then require the executor or administrator to appear and give a bond with new sureties, and if he neglects to do so his letters will be revoked, and a new executor or administrator appointed. If new sureties are given to the satisfaction of the judge, the surety who applied for release will not be liable on the bond for any subsequent act, default, or misconduct of the executor or administrator.

Code of Civil Procedure, Sections 1403, 1404, 1405.

Section 1057.—RESIGNATION OF EXECUTOR OR ADMINISTRATOR.—An executor or administrator may resign if he wishes to do so. He may do this by filing in the Superior Court a written notice that he resigns his appointment. But, before his resignation can be accepted by the court he must file his accounts and have them allowed and settled by the court. The court can then make an order allowing and accepting the resignation.

If there are a number of executors or administrators, and one of them resigns, it will be the duty of those who remain to administer and settle up the estate.

Code of Civil Procedure, Section 1427.

Section 1058.—SUIT AGAINST BONDSMEN.—If the letters of an executor or administrator are revoked, or if he resigns or dies, and it is discovered that he has been faithless to his trust, any person injured by his bad conduct

may bring a suit against his bondsmen to make good the losses sustained.

Section 1059.—INVENTORY AND APPRAISEMENT.—As soon as an executor or administrator has qualified, he is entitled to the immediate possession of the real estate and personal property of the deceased. He may receive the rents and profits of the real estate, until the estate is settled. And, as he has possession and charge of the estate, the law requires him to show to the court what property the estate consists of, and its location and condition. This he does by having an inventory and appraisement made, which is filed with the court. The inventory is made by the executor or administrator, under oath, containing a true statement of the real and personal estate of the deceased which has come to his possession or knowledge, and must be made and filed within three months after his appointment. Attached to the inventory must be an appraisement of the value of the property.

To make the appraisement, the court, or a judge thereof, must appoint three disinterested persons, one of whom must be one of the inheritance tax appraisers provided for by law (any two of which appraisers may act); provided, that the court may, in its discretion, appoint said inheritance tax appraiser as sole appraiser to appraise said estate.

Said appraisers are entitled to receive a reasonable compensation for their services, not to exceed five dollars per day, to be allowed by the court or judge.

The appraisers or appraiser must, with the inventory, file a verified account of their or his services and disbursements.

If any part of the estate is in any other county than that in which letters issued, an appraiser or appraisers thereof may in the same manner as above provided, be appointed, either by the court or judge having jurisdiction of the estate, or by the court or judge of such other county, on request of the court or judge having jurisdiction. No clerk or deputy, nor any person related by consanguinity or affinity to or connected by marriage with, or being a

partner or employee of the judge of the court, shall be appointed or shall be competent to act as appraiser in any estate, or matter or proceeding pending before said judge or in said court.

Act of the Legislature, approved April 7, 1911.

Section 1060.—WHEN ADDITIONAL INVENTORY REQUIRED.—Whenever property not mentioned in the first inventory comes to the possession or knowledge of the executor or administrator, he must make and file another inventory and appraisement covering such property.

Code of Civil Procedure, Sections 1443, 1446, 1451.

Section 1061.—WHEN NO APPRAISEMENT REQUIRED.—If the whole estate consists of money, there need not be an appraisement, but an inventory must be made and returned by the executor or administrator, as in other cases.

Act of the Legislature, approved April 21, 1909.

Section 1062.—MONEY IN BANK.—The surviving husband or wife of any deceased person, or, if no husband or wife is living, then the children of such decedent, may, without procuring letters of administration, collect of any bank any sum which the deceased may have left on deposit in such bank at the time of his or her death; provided, such deposit does not exceed the sum of \$500. An affidavit must be made that the whole amount left on deposit by decedent in any and all banks did not exceed the sum of \$500.

Act of the Legislature, in effect May 16, 1907.

Section 1063.—PROBATE HOMESTEAD AND FAMILY ALLOWANCE.—The court will set aside a homestead for the use of the widow and children, whether there was a homestead during the life of the decedent or not. This homestead will be set aside out of the community property, if there be any, or out of the separate property of the

deceased, if there is no community property. The homestead will be exempt from all claims against the estate, whether individual debts of the deceased, or community debts. The homestead is for the use and support of the widow, child, or children, of the deceased, and is not an asset of the estate for the payment of debts.

When a homestead is set apart to the use of the family, the property, with one exception stated below, is the property of the surviving widow, if there is no minor child. If the decedent left also a minor child or children, the one half of such homestead belongs to the widow, and the remainder to the child, or in equal shares to the children, if there are more than one. If there is no wife surviving, the whole property belongs to the minor child or children. If the property set apart is a homestead selected from the separate property of the decedent, the court can set it apart only for a limited period, and, subject to such homestead right, the title vests in the heirs of the deceased or devisees.

Act of the Legislature, approved February 16, 1911.

Section 1064.—EXEMPT PROPERTY.—In addition to the homestead, the law provides that the court must set apart for the use of the family all the property of the estate which is by law exempt from execution.

Section 1065.—EXTRA ALLOWANCE.—If the amount set apart be insufficient for the support of the widow and minor children, the court will make such further reasonable allowance out of the estate as shall be necessary for the maintenance of the family, according to their circumstances, during the progress of the settlement of the estate. Any such allowance made by the court must be paid by the executor or administrator in preference to all other charges, except funeral charges, and expenses of administration; and any such allowance, whenever made, may, in the discretion of the court, take effect from the death of the decedent.

Code of Civil Procedure, Sections 1465, 1466, 1467, 1468.

Section 1066.—ADMINISTRATION WHEN ESTATE DOES NOT EXCEED FIFTEEN HUNDRED DOLLARS.—If it appears from the inventory that the value of the whole estate does not exceed the sum of fifteen hundred dollars, over and above liens and incumbrances existing at the date of the death of the deceased, the court must make an order assigning to the widow of the deceased, or if there be no widow then to the minor children, the whole of the estate. And the title to the property will vest absolutely in such widow or minor children, after the payment of the expenses of the last illness of the deceased, funeral charges, and expenses of administration. The property will still be subject, however, to whatever mortgages, liens, or incumbrances there may have been upon it at the time of the death of the deceased. After property worth not more than fifteen hundred dollars is assigned by the court as above stated, there can be no further proceedings in the administration, unless other property is afterwards discovered.

Code of Civil Procedure, Section 1469.

Section 1067.—CLAIMS AGAINST THE ESTATE.—After property has been appropriated from the estate for the support of the widow or minor children, as provided by law, the claims of creditors are to be next considered.

Section 1068.—NOTICE TO CREDITORS.—Every executor or administrator must publish a notice to creditors, immediately after his appointment, requiring all persons having claims against the decedent to present them, with the necessary vouchers, to the executor or administrator, at the place of his residence or business, to be specified in the notice; provided, his residence or place of business must be in the county where the estate is being settled. The notice to creditors must be published in some newspaper in the county, if there is one, or if not, then in a newspaper designated by the court. The notice must be published as often as the court deems necessary, but not less than once

a week for four successive weeks. The time expressed in the notice, within which claims against the estate shall be presented, must be ten months after its first publication, when the estate exceeds in value the sum of ten thousand dollars, and four months when it does not exceed the sum of ten thousand dollars.

Act of the Legislature, approved March 21, 1911.

Section 1069.—CLAIMS BARRED IF NOT PRESENTED IN TIME.—All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the executor or administrator within the time limited in the legal notice to creditors, and any claim not so presented is barred forever. But, when it is made to appear to the satisfaction of the court by the affidavit of the creditor, that the creditor was out of the State when the notice was published, the claim may be presented at any time before a decree of distribution is entered.

Section 1070.—CLAIMS MUST BE VERIFIED.—Every claim presented to the administrator or executor must be sworn to by the claimant or some one on his behalf, who must make affidavit that the amount is justly due, that no payments have been made thereon which are not credited, and that there are no offsets to the claim within the knowledge of the affiant. The oath may be taken before any officer authorized to administer oaths. The executor or administrator may also require satisfactory vouchers to be produced in support of the claim.

Section 1071.—ALLOWANCE AND REJECTION OF CLAIMS.—When a claim has been presented to the executor or administrator, he must indorse thereon his allowance or rejection, with the day and date. If he allows the claim, it must be presented to the judge of the court, who must in the same manner indorse on it his allowance or rejection. If the executor or administrator, or the judge, refuse or neglect to indorse such allowance or rejection for

ten days after the claim has been presented to him, such refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the tenth day; and if the presentation be made by a notary, the certificate of such notary, under seal, will be *prima facie* evidence of such presentation and the date thereof.

If the claim be presented to the executor or administrator before the expiration of the time limited for the presentation of claims, it will be presented in time, though acted upon by the executor or administrator, and by the judge, after the expiration of such time.

Every claim which has been allowed by the executor or administrator and the judge must be filed in the court, within thirty days thereafter, and will then rank among the acknowledged debts of the estate, to be paid in due course of administration.

Section 1072.—SUIT ON REJECTED CLAIM.—If a claim is rejected by the executor or administrator or by the court, the holder must bring suit against the executor or administrator within three months after written notice of its rejection, if the claim be then due, or within two months after it becomes due. If he does not bring suit within such time, the claim will be barred forever.

Section 1073.—CLAIM WHEN SUIT PENDING.—If a suit is pending against a person at the time of his death, the claim must be presented to the administrator or executor, the same as if no suit had been commenced. If the claim is not so presented, no recovery can be had in the suit.

Section 1074.—PAYMENT OF JUDGMENTS.—When any judgment has been rendered against a person in his lifetime, no execution can be issued on the judgment after his death, but it must be presented to the executor or administrator in the same manner as any other claim; and, if

justly due and unsatisfied, it must be paid in due course of administration.

Section 1075.—ALLOWANCE OF CLAIM IN PART.

—Whenever any claim is presented to an executor or administrator or to a judge, and he is willing to allow the claim in part, he must state in his indorsement the amount he is willing to allow. If the creditor refuses to accept the amount allowed in satisfaction of his claim, and sues upon it, he will not be allowed any costs unless he recovers a greater amount.

Section 1076.—STATUTE OF LIMITATIONS.—No claim can be allowed by the executor or administrator, or by a judge of the Superior Court, which is barred by the statute of limitations.

No claim against any estate, which has been presented and allowed, is affected by the statute of limitations pending the proceedings for the settlement of the estate.

Section 1077.—CLAIM OF EXECUTOR OR ADMINISTRATOR.—If the executor or administrator is himself a creditor, his claim, duly authenticated by affidavit, must be presented for allowance or rejection to the judge of the court. The judge may allow or reject the claim. Its allowance by the judge is sufficient evidence of its correctness. If the claim of an executor or administrator is rejected by the judge, he may sue the estate, and summons in the suit can be served upon the judge.

Section 1078.—FAILURE TO PRESENT MORTGAGE CLAIM.—If a mortgagee fails to present his claim against the estate to the executor or administrator, within the time required by law, he will not altogether lose his debt. He may still sue upon the mortgage, because it was a lien upon the property of the deceased during his lifetime. But, not having presented his claim as required by law, he must

look only to the property of the estate covered by his mortgage for the collection of the amount due him. He will get it all, if the property will sell for enough to pay it. But if the money cannot be got out of the mortgaged property, by failure to present the mortgage claim he loses the right to have other property of the estate applied to the payment of the deficiency. Where a mortgage claim is not presented against the estate, the debt must be collected out of the mortgaged property, or not at all; and no attorney fees can be recovered upon such a claim not presented, even though the mortgage may have provided for attorney fees.

Code of Civil Procedure, Sections 1490, 1491, 1493, 1494, 1496, 1497, 1498, 1499, 1500, 1502, 1503, 1505.

Section 1079.—SALE OR MORTGAGE OF PROPERTY.—No sale or mortgage of any property of an estate is valid unless made under order of the court.

Section 1080.—SALE OF PERSONAL PROPERTY.—At any time after receiving letters the executor or administrator may apply to the court for an order to sell the perishable property of the estate, and other personal property likely to depreciate in value, or which will incur loss or expense by being kept, and so much other personal property as may be necessary to pay the family allowance.

If claims against the estate have been allowed, or money is necessary for the payment of the expenses of administration, or to pay legacies, the court may make an order to sell so much of the personal property as may be necessary. Partnership interests may also be ordered sold, when it appears to be for the best interest of the estate.

Sales of personal property must be made at public auction, unless the court expressly orders a private sale. Sales of personal property can only be had after notice given of at least ten days, by posting notices in three public places in the county, or by publication in a newspaper.

Section 1081.—SALE OR MORTGAGE OF REAL PROPERTY.—When the personal estate in the hands of the executor or administrator is insufficient to pay the family allowance, and the debts and charges of administration, or the claims outstanding against the decedent, or legacies; or when it appears to the satisfaction of the court that it is for the advantage, benefit, and best interest of the estate and those interested therein, that the real estate or some part thereof be sold; the executor or administrator may sell any real as well as personal property of the estate, upon the order of the court. The court may order all or a part of the real estate sold.

The land may be mortgaged, instead of being sold, if the court shall be satisfied that a mortgage will be best for the estate and for all concerned.

If a sale be ordered, it may be either for cash, or on credit not exceeding one year.

The land may be sold in one parcel or in subdivisions, as the executor or administrator shall judge most beneficial to the estate, unless the court otherwise specially directs.

The sale of real estate may be at public auction, or at private sale, as the court may direct.

Sales at public auction must be made in the county where the land is situated; but when the land is situated in two or more counties, it may be sold in either. The sale must be made between the hours of nine o'clock in the morning and the setting of the sun on the same day.

If the sale is at private sale, bids must be presented to the executor or administrator in writing, or the bids may be filed in the office of the clerk of the court. Notice of receiving bids must be given as directed by the court.

Section 1082.—CONFIRMATION OF SALE.—The sale of real estate must be confirmed by the Superior Court. The executor or administrator must make a report to the court after the sale, and if the court is of the opinion that the proceedings were unfair, or that the property was sold for less than its value, and that a new offer exceeding the

selling price at least ten per cent, exclusive of expenses of a new sale, may be obtained, the court will refuse to confirm the sale, and will order another sale. On the contrary, if it appears to the court that the sale was legally made and fairly conducted, and that ten per cent more cannot be obtained, an order will be made confirming the sale and directing conveyances to be executed; and such sale from that time becomes confirmed and valid. But even if the sale was not fair, and was made for less than the value of the property, the court is not absolutely required to order another sale; for if an offer of ten per cent more in amount than that named in the return of the first sale be made to the court, in writing, by a responsible person, it is in the discretion of the court to accept such offer and confirm the sale to such person, without ordering a new sale.

Code of Civil Procedure, Sections 1536, 1542, 1544, 1547, 1548, 1549, 1552, 1554.

Section 1083.—SALE UNDER A WILL.—When property is directed by will to be sold, or authority is given in the will to sell property, the executor may sell any property of the estate without the order of the court, and either by public or private sale, and with or without notice; but the executor must make a return to the court of such sales, as in other cases; and if directions are made in the will as to the mode of selling, or the particular property to be sold, such directions must be observed. In either case no title passes unless the sale is confirmed by the court.

Code of Civil Procedure, Section 1561.

Section 1084.—COMPENSATION OF EXECUTORS AND ADMINISTRATORS.—When no compensation is provided by the will, or the executor renounces all claim thereto, he must be allowed commissions upon the amount of estate accounted for by him, as follows: For the first thousand dollars, at the rate of seven per cent; for the next nine thousand dollars, at the rate of four per cent; for the next ten thousand dollars, at the rate of three per cent; for

the next thirty thousand dollars, at the rate of two per cent; for the next fifty thousand dollars, at the rate of one per cent; and for all above one hundred thousand dollars, at the rate of one half of one per cent. If there are two or more executors the compensation shall be apportioned among them by the court according to the services actually rendered by them respectively. The same commissions shall be allowed to administrators. In all cases, such further allowance may be made as the court may deem just and reasonable for any extraordinary service, but the total amount of such extra allowance must not exceed one half the amount of commissions allowed by this section. Where the property of the estate is distributed in kind, and involves no labor beyond the custody and distribution of the same, the commission shall be computed on all the estate above the value of twenty thousand dollars, at one half of the rates fixed in this section. Public administrators shall receive the same compensation and allowances as are allowed in this title to other administrators. All contracts between an executor or administrator and an heir, devisee or legatee, for a higher compensation than that allowed by this section, shall be void.

Code of Civil Procedure, Section 1618.

Section 1085.—ATTORNEY FEES.—Executors and administrators must be allowed, for fees of their attorneys, for conducting the ordinary probate proceedings, the same amounts specified in the preceding sections as commissions for their own services.

In all cases, such further allowance may be made as the court may deem just and reasonable, for any extraordinary service, such as sales or mortgages of real estate, contested or litigated claims against the estate, litigation in regard to the property of the estate, and such other litigation as it may become necessary for the executor or administrator to prosecute or defend.

Code of Civil Procedure, Section 1619.

Section 1086.—PARTIAL ALLOWANCE TO EXECUTOR, ADMINISTRATOR OR ATTORNEY.—At any time after one year from the admission of a will to probate, or the granting of letters of administration, any executor, or administrator, may, upon such notice to the other parties interested in the estate as the court shall by order require, apply to the court for an allowance to himself upon his commissions, and the court shall on the hearing of such application make an order allowing such executor or administrator such portion of his commissions as to the court shall seem proper, and the portion so allowed may be thereupon charged against the estate.

Any attorney who has rendered services to an executor or administrator may at any time during the administration, and upon such notice to the other parties interested in the estate as the court shall by order require, apply to the court for an allowance to himself of compensation therefor, and the court shall on the hearing of such application make an order requiring the executor or administrator to pay to such attorney out of the estate such compensation on account of services rendered by such attorney up to the date of such order as to the court shall seem proper, and such payment shall be forthwith made.

Act of the Legislature, approved April 7, 1911.

Section 1087.—ACCOUNTS OF EXECUTORS AND ADMINISTRATORS.—When required by the court, either upon its own motion or upon the application of any person interested in the estate, the executor or administrator must render an account under oath, showing the amount of money received and expended by him, the amount of all claims presented against the estate, and the names of the claimants, and all other matters necessary to show the condition of its affairs. Objections may be made to the correctness of the account, by any person interested, which the court will hear and determine.

Code of Civil Procedure, Section 1622.

Section 1088.—PAYMENT OF DEBTS.—The debts of the estate must be paid in the following order:

1. Funeral expenses;
2. Expenses of the last sickness;
3. Debts having preference by the laws of the United States;
4. Judgments rendered against the decedent in his life time, and mortgages and other liens in the order of their date;
5. All other demands against the estate.

The preference given to a mortgage or lien only extends to the proceeds of the property subject to the mortgage or lien.

Code of Civil Procedure, Sections 1643, 1644.

Section 1089.—ERECTION OF MONUMENT.—Executors and administrators of the estates of deceased persons have authority to expend a reasonable sum out of the estate to erect a monument, or tombstone, suitable to mark the grave of the deceased.

Section 1090.—PARTIAL DISTRIBUTION OF ESTATE.—At any time after four months from the issuing of letters to an executor or administrator any heir, devisee, or legatee, or his assignee, grantee, or successor in interest, may apply to the Superior Court for the legacy or share of the estate to which he is entitled. If, on the hearing of the application, it appears to the court that the estate is but little in debt, and that the share of the party applying may be allowed him without injury to the creditors of the estate, the court must order the executor or administrator to deliver to him the whole portion of the estate to which he may be entitled, or a part of it; provided, he must give the executor or administrator a bond, to secure the payment of his portion of the debts due from the estate. Where the time for filing or presenting claims has expired, and all claims that have been allowed have

been paid, or are secured by mortgage upon real estate sufficient to pay them, and the court is satisfied that no injury can result to the estate, the court may dispense with the bond.

Act of the Legislature, approved April 24, 1911.

Section 1091.—FINAL DISTRIBUTION OF ESTATE.—Upon the final settlement of the accounts of the executor or administrator, or at any subsequent time, upon the application of the executor or administrator, or of any heir, legatee, devisee, (or his assignee, grantee or successor in interest), the court must proceed to distribute the residue of the estate in the hands of the executor or administrator, if any, among the persons who by law are entitled thereto; and if the decedent has left a surviving child, or the issue of a deceased child, and any of them, before the close of the administration, have died while under age and not having been married, no administration on such deceased child's estate is necessary, but all the estate which such deceased child was entitled to by inheritance must, without administration, be distributed as provided by law. A statement of any receipts and disbursements of the executor or administrator, since the rendition of his final account, must be reported and filed at the time of making such distribution.

Act of the Legislature, approved April 24, 1911.

Section 1092.—SUCCESSION TO PROPERTY.—If a person dies, leaving a will, his property goes to the persons named therein as legatees.

Who may make a will, who may take by will, and what may be disposed of by will, has been discussed under the heading "Last Wills."

We now consider how the property of a person who dies, leaving no will, will descend upon his death, and to whom it will go in succession as his heirs at law.

The Code defines the term succession, as the coming in of another to take the property of one who dies without

disposing of it by will. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the probate court, and to the possession of any administrator appointed by the court for the purposes of administration. When a person dies without disposing of his property by will, it is succeeded to and must be distributed, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or the child living and the issue of the deceased child or children by right of representation;

2. If the decedent leaves no issue, the estate goes one-half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one-half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue,

nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

3. If there is neither issue, husband, wife, father, nor mother, then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children nor grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

5. If the decedent leaves neither issue, husband, wife, father, mother, brother nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead, by right of representation;

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

8. If the deceased is a widow, or widower, and leaves no issue, and the estate, or any portion thereof, was common property of such decedent and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse

and to the descendants of such children by right of representation, and if none, then one-half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the descendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation.

If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent, devise, or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivisions eight of this section, the same escheats to the State for the support of the common schools.

Act of the Legislature, in effect May 18, 1907.

Section 1093.—INHERITANCE OF HUSBAND AND WIFE FROM EACH OTHER.—The above provisions of this law, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedent.

Section 1094.—DISTRIBUTION OF COMMUNITY PROPERTY ON DEATH OF HUSBAND.—Upon the death of the husband, one-half of the community property

goes to the surviving wife, and the other half is subject to the testamentary disposition of the husband, and in the absence of such disposition, goes to his descendants equally, if such descendants are in the same degree of kindred to the deceased, otherwise according to the right of representation; and in the absence of both such testamentary disposition and such descendants, is subject to distribution in the same manner as the separate property of the husband. In case of the dissolution of the community by the death of the husband, the entire community property is equally subject to his debts, the family allowance, and the charges and expenses of administration.

Section 1095.—DISTRIBUTION OF COMMUNITY PROPERTY ON DEATH OF WIFE.—Upon the death of the wife, the entire community property, without administration, belongs to the surviving husband. If any portion of the community property has been set apart for the wife by judicial decree, for her support and maintenance, this portion does not go to her husband upon her death, but may be willed away by her; and in the absence of her testamentary disposition, it will go to her heirs, exclusive of her husband.

Civil Code, Sections 1400, 1401, 1402.

Section 1096.—RIGHTS OF ILLEGITIMATE CHILD.—Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child. An illegitimate child is in all cases the heir of his mother, whether the father acknowledges him or not. An illegitimate child cannot claim any part of the estate of any deceased children or other heirs of his father or mother, unless his parents marry, and his father after such marriage acknowledges him and adopts him into his family.

Civil Code, Section 1387.

Section 1097.—ADVANCEMENTS.—Any estate, real or personal, that may have been given by the decedent in his lifetime as an advancement to any child or other heir, is considered a part of the estate, so far as regards its division and distribution, and must be taken by the person receiving it toward his share of the estate. If the amount of the advancement exceeds the share of the heir, he will be excluded from any further portion in the division and distribution of the estate, but he will not be required to refund any part of his advancement. If the amount advanced be less than his share, he will be entitled to so much more as will give him his full share of the estate. All gifts and grants are deemed to have been made as an advancement, if expressed in the gift or grant to be so made, or if charged in writing by the deceased as an advancement, or acknowledged in writing as such by the child or other heir.

Civil Code, Sections 1395, 1396, 1397.

Section 1098.—CONTRACT TO CONVEY REAL ESTATE.—If any person, who is bound by a contract in writing to convey any real property, dies before making the conveyance, the Superior Court may make a decree authorizing his executor or administrator to make a deed of the land to the person entitled thereto. The person entitled to the deed has the right to file a petition in court showing the contract, and will then be allowed to prove it. If he proves his right to the deed, it will be made to him by order of the court, and will convey the same title which a deed signed by the deceased would have conveyed if made in his lifetime.

Section 1099.—DISCHARGE OF ADMINISTRATOR OR EXECUTOR.—When the estate has been fully administered upon, and it is shown, by the executor or administrator, by the production of satisfactory vouchers, that he has paid all sums of money due from him, and delivered

up under order of the court all property of the estate to the persons entitled thereto, the court will make a decree discharging him from all liability to be incurred thereafter.

Section 1100.—CLAIMS PAID WITHOUT VOUCHERS.—On the settlement of his account the executor or administrator may be allowed any item of expenditure not exceeding twenty dollars, for which no voucher is produced, if such item be supported by his own uncontradicted oath positive to the fact of payment, specifying when, where, and to whom it was made; but such allowances in the whole must not exceed five hundred dollars against any one estate, provided, that, if it appears by the oath to the account and is proven by competent evidence, to the satisfaction of the court, that a voucher for any disbursement or disbursements whatsoever, has been lost or destroyed, and that it is impossible to obtain a duplicate thereof, and that such item or items were paid in good faith and for the best interests of the estate, and such item or items were legal charges against said estate, then the executor or administrator shall be allowed such item or items.

If, upon such settlement of accounts, it appears that debts against the deceased have been paid without the affidavit and allowance prescribed by statute, and it shall be proven by competent evidence to the satisfaction of the court that such debts were justly due, were paid in good faith, that the amount paid was the true amount of such indebtedness over and above all payments or set-offs, and that the estate is solvent, it shall be the duty of the said court to allow the said sums so paid in the settlement of said accounts.

Act of the Legislature, approved April 5, 1911.

Section 1101.—DISTRIBUTION WHEN DECEDENT WAS NOT A RESIDENT OF THE STATE.—Upon application for distribution, after final settlement of the accounts of administration, if the decedent was a non-resident of this state, leaving a will which has been duly proved or allowed in the state of his residence, and an

authenticated copy thereof has been admitted to probate in this state, or if the decedent died intestate, and an administrator has been duly appointed and qualified in the state of his residence, and it is necessary, in order that the estate, or any part thereof, may be distributed according to the will, or if the court is satisfied that it is for the best interests of the estate, that the estate in this state should be delivered to the executor or administrator in the state or place of the decedent's residence, the court may order such delivery to be made, and, if necessary, order a sale of the real estate, and a like delivery of the proceeds. The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator with the will annexed or administrator, in this state, in relation to all property embraced in such order, which, unless reversed on appeal, binds and concludes all parties in interest. Sales of real estate, ordered by virtue of this section, must be made in the same manner as other sales of real estate of decedents by order of the court.

Act of the Legislature, approved April 7, 1911.

Section 1102.—INHERITANCE TAX LAW.—A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, to be paid to the treasurer of the proper county, as hereinafter directed, for the use of the state, in the following cases:

(1) **By Will of Resident.**—When the transfer is by will or by the intestate or homestead laws of this state, from any person dying seized or possessed of the property while a resident of the state, or by any probate homestead set apart from said property.

(2) **By Will of Non-resident.**—When the transfer is by will or intestate laws of property within this state and the decedent was a non-resident of the state at the time of his death.

(3) **Transfer Without Adequate Consideration.**—When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this state, by deed, grant, bargain, sale, assignment or gift, made without valuable and adequate consideration in contemplation of the death of the grantor, vendor, assignor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this act.

(4) **Taxes to be Lien Against Property.**—Such taxes shall be and remain a lien upon the property passed or transferred until paid, and the person to whom the property passes or is transferred, and all administrators, executors, and trustees of every estate so transferred or passed, shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed; provided, that unless sued for within five years after they are due and legally demandable, such taxes shall cease to be a lien as against any bona fide purchaser of real property; and provided that no such lien shall cease within five years from the date of the passage of this act. The tax so imposed shall be upon the market value of such property at the rates hereinafter prescribed and only upon the excess over the exemptions hereinafter granted.

(5) **Exercise of Power of Appointment Deemed Transfer.**—Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment, when made, shall be deemed a transfer taxable under the provisions of this act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power, and had been bequeathed or devised by such donee by will; and whenever

any person or corporation possessing such power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

(a) **Rates of Tax.**—When the property or any beneficial interest therein so passed or transferred exceeds in value the exemption hereinafter specified and shall not exceed in value twenty-five thousand dollars the tax hereby imposed shall be:

(1) **When Beneficiary Is Husband, Etc.**—Where the person or persons entitled to any beneficial interest in such property shall be the husband, wife, lineal issue, lineal ancestor of the decedent or any child adopted as such in conformity with the laws of this state, or any child to whom such decedent for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent; provided, however, such relationship began at or before the child's fifteenth birthday, and was continuous for said ten years thereafter, or any lineal issue of such adopted or mutually acknowledged child, at the rate of one per centum of the clear value of such interest in such property.

(2) **When Brother, Etc.**—Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister or a descendant of a brother or sister of the decedent, a wife or widow of a son, or the husband of a daughter of the decedent, at the rate of two per centum of the clear value of such interest in such property.

(3) **When Brother of Father, etc.**—Where the person or persons entitled to any beneficial interest in such property

shall be the brother or sister of the father or mother or a descendant of a brother or sister of the father or mother of the decedent, at the rate of three per centum of the clear value of such interest in such property.

(4) **When Brother of Grandfather, etc.**—Where the person or persons entitled to any beneficial interests in such property shall be the brother or sister of the grandfather or grandmother or a descendant of the brother or sister of the grandfather or grandmother of the decedent, at the rate of four per centum of the clear value of such interest in such property.

(5) **Other degrees of Consanguinity.**—Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the decedent, or shall be a body politic or corporate, at the rate of five per centum of the clear value of such interest in such property.

(b) **Rates on Property in Excess of \$25,000.**—The foregoing rates are for convenience termed the primary rates. When the market value of such property or interest exceeds twenty-five thousand dollars, the rates of tax upon such excess shall be as follows:

(1) Upon all in excess of \$25,000 and up to \$50,000, two times the primary rates.

(2) Upon all in excess of \$50,000 and up to \$100,000, three times the primary rates.

(3) Upon all in excess of \$100,000 and up to \$500,000, four times the primary rates.

(4) Upon all in excess of \$500,000, five times the primary rates.

(c) **Property Exempt from Tax.**—The following exemptions from the tax are hereby allowed:

(1) All property transferred to societies, corporations, and institutions now or hereafter exempted by law from taxation, or to any public corporation, or to any society, corporation,

institution, or association of persons engaged in or devoted to any charitable, benevolent, educational, public, or other like work (pecuniary profit not being its object or purpose), or to any person, society, corporation, institution, or association of persons in trust for or to be devoted to any charitable, benevolent, educational, or public purpose, by reason whereof any such person or corporation shall become beneficially entitled, in possession or expectancy, to any such property or to the income thereof.

(2) Property of the clear value of twenty-four thousand (\$24,000) dollars, transferred to the widow or to a minor child of the decedent, and of ten thousand (\$10,000) dollars transferred to each of the other persons described in the first subdivision of section (a) shall be exempt.

(3) Property of the clear value of two thousand (\$2,000) dollars transferred to each of the persons described in the second subdivision of section (a) shall be exempt.

(4) Property of the clear value of one thousand five hundred (\$1,500) dollars transferred to each of the persons described in the third subdivision of section (a) shall be exempt.

(5) Property of the clear value of one thousand (\$1,000) dollars transferred to each of the persons described in the fourth subdivision of section (a) shall be exempt.

(6) Property of the clear value of five hundred (\$500) dollars transferred to each of the persons and corporations described in the fifth subdivision of section (a) shall be exempt.

(d) Tax on Life Estate Becomes Due Immediately After Death of Decedent.—When any grant, gift, legacy, devise or succession upon which a tax is imposed by section one of this act shall be an estate, income, or interest for a term of years, or for life, or determinable upon any future or contingent event, or shall be a remainder, reversion, or other expectancy, real or personal, the entire property or fund by which such estate, income, or interest is supported, or of which it is a part, shall be appraised immediately after the

death of the decedent, and the market value thereof determined, in the manner provided in section fifteen of this act, and the tax prescribed by this act shall be immediately due and payable to the treasurer of the proper county, and, together with the interest thereon, shall be and remain a lien on said property until the same is paid; provided, that the person or persons, or body politic or corporate, beneficially interested in the property chargeable with said tax, may elect not to pay the same until they shall come into the actual possession or enjoyment of such property, and in that case such person or persons, or body politic or corporate, shall execute a bond to the people of the State of California, in a penalty of twice the amount of the tax arising upon personal estate, with such sureties as the said superior court may approve, conditioned for the payment of said tax, and interest thereon, at such time or such period as they or their representatives may come into the actual possession or enjoyment of such property, which bond shall be filed in the office of the county clerk of the proper county, and a certified copy thereof shall be immediately transmitted to the state controller; provided further, that such person shall make a full and verified return of such property to said court, and file the same in the office of the county clerk within one year from the death of the decedent, and within that period enter into such security, and renew the same every five years.

(e) **Bequests to Executors.**—Whenever a decedent appoints or names one or more executors or trustees, and makes a bequest or devise of property to them in lieu of commissions or allowances, which otherwise would be liable to said tax, or appoints them his residuary legatees, and said bequest, devises, or residuary legacies exceed what would be a reasonable compensation for their services, such excess over and above the exemptions herein provided for shall be liable to said tax; and the superior court in which the probate proceedings are pending shall fix the compensation.

(f) **When Taxes Are Due.**—All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and if the same are paid within eighteen months, no interest shall be charged and collected thereon, but if not so paid, interest at the rate of ten per centum per annum shall be charged and collected from the time said tax accrued; provided, that if said tax is paid within six months from the accruing thereof a discount of five per centum shall be allowed and deducted from said tax. And in all cases where the executors, administrators, or trustees do not pay such tax within eighteen months from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section five of this act for the payment of said tax, together with interest.

(g) **When Penalty for Non-payment of Tax May Be Suspended.**—The penalty of ten per cent per annum imposed by section seven hereof, for the non-payment of said tax, shall not be charged in cases where, in the judgment of the court, by reason of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, the estate of any decedent, or a part thereof, cannot be settled at the end of eighteen months from the death of the decedent; but in such cases seven per cent per annum shall be charged upon the said tax from the expiration of said eighteen months until the cause of such delay is removed, after which ten per cent interest per annum shall again be charged until the tax is paid; but litigation to defeat the payment of the tax shall not be considered necessary litigation.

(h) **Executor to Deduct Tax from Property Before Delivery to Legatee.**—Any administrator, executor, or trustee having in charge or trust any legacy or property for distribution, subject to the said tax, shall deduct the tax therefrom, or if the legacy or other property be not money he shall collect the tax thereon, upon the market value thereof, from the legatee or person entitled to such property, and he shall not deliver, or be compelled to deliver, any specific legacy or property subject to tax to any person until

he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate, the executor, administrator, or trustee shall collect said tax from the distributee thereof, and the same shall remain a charge on such real estate until paid; if, however, such legacy be given in money to any person for a limited period, the executor, administrator, or trustee shall retain the tax upon the whole amount; but if it be not in money he shall make application to the superior court to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

(i) **Executors to Sell Enough Property to Pay Tax.**—All executors, administrators, and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled by law to do for the payment of debts of the estate, and the amount of said tax shall be paid as hereinafter directed.

(j) **Tax Paid to County Treasurer.**—Every sum of money retained by an executor, administrator, or trustee, or paid into his hands, for any tax on property, shall be paid by him, within thirty days thereafter, to the treasurer of the county in which the probate proceedings are pending. Upon the payment to any county treasurer of any tax due under this act, such treasurer shall issue a receipt therefor in triplicate, one copy of which he shall deliver to the person paying said tax, and the original and one copy thereof he shall immediately send to the controller of state, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and said controller shall retain one of said receipts and the other he shall countersign and seal with the seal of his office, and immediately transmit to the clerk of the court fixing such tax. And an executor, administrator, or trustee shall not be entitled to credits in his accounts, nor be discharged from liability for such tax, nor shall said

estate be distributed, unless a receipt so sealed and countersigned by the controller, or a copy thereof, certified by him, shall have been filed with the court.

Any person shall, upon payment to the county treasurer of the sum of fifty cents, be entitled to a duplicate, or copy, of any receipt that may have been given by said treasurer for the payment of any tax under this act.

(k) Refund of Tax Paid Before Debts Are Proven.—Whenever any debts shall be proven against the estate of a decedent after the payment of legacies or distribution of property from which the said tax has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir, or next of kin, a proportion of the tax so deducted or paid shall be repaid to him by the executor, administrator, or trustee, if the said tax has not been paid to the county treasurer or to the state treasurer, or by said county treasurer, or said state treasurer (on warrant of the state controller) if it has been so paid.

(1) When Stock Is Transferred by Foreign Executor Tax Shall Be Paid.—If a foreign executor, administrator or trustee shall assign or transfer any stock or obligation in this state standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon

their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the state controller and county treasurer at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent or one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this act, unless the state controller, or person by him in writing authorized so to do, consents thereto in writing. And it shall be lawful for the state controller or the county treasurer, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided, or violation of the provisions of this section, shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of not less than one thousand nor more than twenty thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in

an action brought by the state controller or county treasurer in any court of competent jurisdiction.

(m) **Inheritance Tax Appraisers.**—The state controller shall appoint, and may at his pleasure remove, one or more persons in each county of the state to act as inheritance tax appraisers therein. Every such inheritance tax appraiser (in addition to any fees paid him as appraiser under section 1444 of the Code of Civil Procedure) shall be paid by the county treasurer, out of any funds that he may have in his hands on account of said tax, on presentation of a sworn itemized account and on the certificate of the superior court, at the rate of five dollars per day for every day actually and necessarily employed in said inheritance tax appraisal, together with his actual and necessary traveling and other incidental expenses, and the fees paid such witnesses as he shall subpoena before him, which fees shall be the same as those now paid witnesses subpoenaed to attend in courts of record. Any such appraiser who shall take any fee or reward, other than such as may be allowed him by law, from any executor, administrator, trustee, legatee, next of kin, or heir of any decedent, or from any other person liable to pay said tax, or any portion thereof, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars, or be imprisoned in the county jail ninety days, or both, and in addition thereto the court shall dismiss him from such service.

(n) **Superior Court to Order Valuation of Property.**—The superior court having jurisdiction to determine any such tax, either upon its own motion or upon the application of any interested person, including the state controller or county treasurer, shall by order direct the person, or one of the persons, appointed pursuant to this act to fix the clear market value of property of persons whose estates shall be subject to the payment of any tax under this act. Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property

to be appraised, including the state controller and the treasurer of the county in which such tax is to be paid, and to such person or persons as the superior court may by order direct, of the time and place when he will hear all persons interested in the appraisement of such estate. He shall thereupon appraise the said property at its fair market value as herein prescribed; and for the purpose of making said appraisement the said appraiser is hereby authorized to issue subpoenas and compel the attendance of witnesses before him, to administer oaths, and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing to the said superior court, together with the depositions of the witnesses examined, and such other facts in relation thereto as said superior court may order or require; and the value of every future or contingent or limited estate, income, or interest shall, for the purposes of this act, be determined by the rule, method, and standards of mortality and of value that are set forth in the actuaries' combined experience tables of mortality for ascertaining the value of policies of life insurance and annuities, and for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum.

(o) **Insurance Commissioner to Determine Value of Contingent Estate.**—The insurance commissioner shall, on the application of any superior court, determine the value of any future or contingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, or other facts to him submitted by said court, and certify the same to the superior court, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

(p) **No Allowance on Account of Contingent Incumbrance.**—In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof

there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed.

(q) **Increase Deemed a Transfer and Taxable.**—Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

(r) **Highest Rate on Property Dependent on Variable Contingencies.**—When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions

of this act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this act, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this act.

(s) Estates in Expectancy to Be Appraised at Full Value.—Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which said estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed with the clerk of said court and the other in the office of the state controller.

(t) Superior Court to Fix Value of Property and Amount of Tax.—From such report of appraisal and other proof relating to any such estate, or property, before the superior court, said court shall, by order, forthwith assess and fix the market value of such property and the amount of tax to which the same is liable, and the clerk of said court shall immediately give notice thereof by mail to the county

treasurer and the state controller, and to all interested persons who shall have furnished said clerk with their names and addresses for the purpose of receiving such notice.

(u) Court May Fix Tax Without Appointing Appraiser.

—The superior court may determine such tax or taxes without appointing an inheritance tax appraiser; provided, that in such determination, said court shall first fix a day upon which it will hear all parties interested in said property and in said tax, and said court shall order the clerk thereof to give notice of said hearing for such time, not less than ten days, and in such manner as said court shall direct, and said clerk shall at least ten days before said hearing mail a copy of such notice to the county treasurer and a copy to the state controller.

(v) Superior Court to Have Jurisdiction.—The superior court in the county in which is situate the real property of a decedent who was not a resident of the state, or if there be no real property, then in the county in which any of the personal property of such non-resident is situate, or in the county of which the decedent was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the court first acquiring jurisdiction hereunder shall retain the same, to the exclusion of every other.

(w) Court to Cite Persons to Appear When Transfer Has Been Made and Tax Not Paid.—If it shall appear to the superior court upon petition of the state controller or the county treasurer or any other interested person that any transfer has been made within the meaning of this act and the taxability thereof and the liability for such tax and the amount thereof have not been determined, and that no proceedings are pending in any court in this state wherein the taxability of such transfer, the liability therefor and the amount thereof may be determined, said court shall issue a citation, citing the persons who may appear liable therefor, or known to own any interest in or part of the property

transferred, to appear before the court on a day certain, not more than ten weeks from the date of such citation, and show cause why said tax should not be determined and paid. The superior court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases.

(x) **After Eighteen Months District Attorney to Bring Suit to Collect Tax.**—If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the county treasurer shall notify, or the state controller may notify, the district attorney of the county in writing of such failure or neglect, and such district attorney shall bring and prosecute an action or actions in the name of the state as plaintiff, for the recovery of such tax and for the purpose of enforcing any lien or liens against all or any of the property subject thereto. In any such action the owner of any property or of any interest in property against which the lien of any such tax is sought to be enforced, and any predecessor in interest of any such owner whose title or interest was deraigned through any such decedent by will or succession or by decree of distribution of the estate of such decedent, and any lienor, or incumbrancer subsequent to the lien of such tax, may be made a party defendant. The enumeration in this section of the persons who may be made defendants shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases.

(y) **Actions Against State to Quiet Title.**—Actions may be brought against the state for the purpose of quieting

title to any property, against the lien or claim of lien of any tax or taxes under this act, or for the purpose of having it determined that any property is not subject to any lien for taxes under this act. In any such action, the plaintiffs may be any administrator or executor of the estate or will of any decedent, whether the said estate shall have been fully administered and the estate settled and closed or not, and any heir, legatee or devisee of any such decedent, or trustee of the estate or of any part of the estate of such decedent, or distributee of the estate or of any part of the estate of any such decedent, and any assignee, grantee or successor in interest of any of such persons, and all or any other persons who might be made parties defendant in any action brought by the state under the provisions of this section, and notwithstanding that all or any of the persons enumerated in this section shall or may have assigned, granted, conveyed or otherwise parted with all or any interest in or title to the property, or any thereof, involved in any such claim of lien before the commencement of such action. All or any of the persons in this act enumerated may be joined or united as parties plaintiff. The enumeration in this section of the persons who may be made parties shall not be deemed to be exclusive, but the joinder or non-joinder of parties, except when otherwise herein provided, shall be governed by the rules in equity in similar cases. In all cases any person who might properly be a party plaintiff in any such action who refuses to join as plaintiff may be made a defendant.

(z) County Treasurer to Notify District Attorney of Transfer Without Tax Being Paid.—Whenever the treasurer of any county shall have reason to believe that any transfer has been made within the meaning of this act and that a tax due thereon remains undetermined and unpaid, he shall notify the district attorney in writing of such transfer, and the district attorney, if he have probable cause to believe a tax is due, and remains undetermined, shall prosecute the necessary proceeding in the superior court to determine and fix such tax and for the enforcement and collection thereof.

(aa) **Amounts County Treasurers May Retain.**—The treasurer of each county shall be allowed to retain, on all taxes paid and accounted for by him each year under this act, in addition to his salary or fees now allowed by law, three per centum on the first fifty thousand dollars so paid and accounted for by him, one and one-half per centum on the next fifty thousand dollars so paid and accounted for by him, and one-half of one per centum on all additional sums so paid and accounted for by him; provided, that no county treasurer shall be entitled to retain to his own use more than the sum of two hundred dollars out of the inheritance taxes paid on account of any transfer or transfers made by, or resulting from the death of, any one decedent.

(bb) **Definition of Terms Used.**—The words “estate” and “property” as used in this act shall be taken to mean the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor, or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees, or successors, and shall include all personal property within or without the state. The word “transfer” as used in this act shall be taken to include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein described. The word “decedent” as used in the act shall include the testator, intestate, grantor, bargainor, vendor, or donor.

The words “contemplation of death” as used in this act shall be taken to include that expectancy of death which actuates the mind of a person on the execution of his will, and in nowise shall said words be limited and restricted to that expectancy of death which actuates the mind of a person in making a gift *causa mortis*; and it is hereby declared to be the intent and purpose of this act to tax any and all transfers which are made in lieu of or to avoid the passing of the property transferred by testate or intestate laws.

Act of the Legislature, approved April 7, 1911.

PART XI.

UNITED STATES BANKRUPT LAWS.

Section 1103.—JURISDICTION OF COURTS.—The District Courts of the United States have jurisdiction of all proceedings brought under the United States bankruptcy law.

Section 1104.—ACTS OF BANKRUPTCY.—Acts of bankruptcy by a person consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee of his property, or, because of insolvency, a receiver or trustee has been put in charge of his property; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors

or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive or continuous possession of the property, unless the petitioning creditors have received actual notice of such transfer or assignment.

It will be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings must be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant must file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

United States Compiled Statutes, page 3423.
Amendments of 1909, page 1309.

Section 1105.—WHO MAY BECOME BANKRUPTS.

—Any person, except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a State or Territory or of the United States.

Act of Congress, Amendments of 1910.

Section 1106.—PARTNERS.—A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

The creditors of the partnership shall appoint the trustee; the court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business, as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

Compiled Statutes of the United States, page 3424.

Section 1107. — EXEMPTIONS OF BANKRUPTS.—

This law does not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws, in force at the time of the filing of the petition, in the State wherein they have had their domicile for six months or the greater portion thereof immediately preceding the filing of the petition.

Compiled Statutes of the United States, page 3424.

Section 1108—DUTIES OF BANKRUPTS.—The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of the law, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided, however, that he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court,

or a judge thereof, for cause shown; and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

Compiled Statutes of the United States, pages 3424, 3425.

Section 1109.—DEATH OR INSANITY OF BANKRUPTS.—The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane; provided, that in case of death, the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

Compiled Statutes of the United States, page 3425.

Section 1110.—PROTECTION AND DETENTION OF BANKRUPTS.—A bankrupt is exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release; and in such case he will be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by law.

The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true

and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

Compiled Statutes of the United States, pages 3425, 3426.

Section 1111.—SUITS BY AND AGAINST BANKRUPTS.—A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

Compiled Statutes of the United States, page 3426.

Section 1112.—COMPOSITIONS WITH CREDITORS.—A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy.

The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

Compiled Statutes of the United States, pages 3426, 3427.

Section 1113.—WHEN DISCHARGE GRANTED.—

Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; or if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application, and discharge the applicant; unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or (3) obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit; or (4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed any of his property with intent to hinder, delay, or defraud his creditors; or (5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or (6) in the course of the proceedings in bankruptcy refused to obey any lawful order of or to answer any material question approved by the court.

The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted,

revoke it upon a trial, if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

United States Compiled Statutes, pages 3427, 3428.
Amendments of 1909, page 1310.

Section 1114.—CO-DEBTORS OF BANKRUPT.—The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for a bankrupt, is not altered by the discharge of such bankrupt.

Section 1115.—DEBTS NOT AFFECTED BY A DISCHARGE.—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are liabilities for obtaining property under false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversation; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

Amendments of 1909, pages 1310, 1311.

Section 1116.—COMPROMISES BY TRUSTEES.—The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate, upon such terms as he may deem for the best interests of the estate.

United States Compiled Statutes, page 3433.

Section 1117.—OFFENSES AND PUNISHMENTS.—

A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is a referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

A person shall be not prosecuted for any offense arising under this law unless the indictment is found or the information is filed in court within one year after the commission of the offense.

United States Compiled Statutes, pages 3433, 3434.

Section 1118.—DUTIES OF REFEREES.—The law declares that referees shall (1) declare dividends and prepare and deliver to trustee dividend sheets showing the dividends declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

United States Compiled Statutes, page 3436.

Section 1119.—APPOINTMENT OF TRUSTEES.—The creditors of a bankrupt estate shall, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened,

or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees to such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor, in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

United States Compiled Statutes, page 3438.

Section 1120.—DUTIES OF TRUSTEES.—Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them on property of such estates; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (3) deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen

days before the day fixed for the final meeting of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

United States Compiled Statutes, pages 3438, 3439.

Section 1121.—COMPENSATION OF TRUSTEES.—

Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered such commissions on all moneys disbursed by them as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such composition.

In the event of an estate being administered by three trustees, instead of one, or by successive trustees, the court must apportion the fees and commissions between them according to the services actually rendered, so that there

shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

United States Statutes, page 3439.

Amendments of 1909, pages 1313, 1314.

Section 1122.—BONDS OF TRUSTEES.—Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so. The court shall require evidence as to the actual value of the property of sureties. There shall be at least two sureties upon each bond. The actual value of the properties of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond. Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

United States Compiled Statutes, page 3440.

Section 1123.—MEETINGS OF CREDITORS.—The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business,

resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

United States Compiled Statutes, page 3442.

Section 1124.—VOTERS AT MEETINGS OF CREDITORS.—Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as otherwise provided.

Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in

computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

United States Compiled Statutes, pages 3442, 3443.

Section 1125.—PROOF AND ALLOWANCE OF CLAIMS.—Proof of claims shall consist of a statement under oath, in writing, signed by a creditor, setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

Claims of secured creditors and those who have priority may be allowed, to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors, or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

Claims which have been allowed may be reconsidered for cause and reallocated or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: Provided, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

United States Compiled Statutes, pages 3443, 3444.

Section 1126.—NOTICES TO CREDITORS.—Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterward filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy, and (8) the proposed dismissal of the proceedings.

Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

All notices shall be given by the referee, unless otherwise ordered by the judge.

United States Compiled Statutes, page 3444.

Section 1127.—WHO MAY FILE PETITIONS.—Any qualified person may file a petition to be adjudged a voluntary bankrupt.

Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount, may file a petition to have him adjudged a bankrupt.

United States Compiled Statutes, page 3445.

Section 1128.—PREFERRED CREDITORS.—A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or make a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after it is recorded or registered.

If a bankrupt shall have given a preference, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

If a creditor has been preferred, and afterward in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

United States Compiled Statutes, pages 3445, 3446.

Amendments of 1909, pages 1314, 1315.

Section 1129.—DEBTS WHICH MAY BE PROVED.

—Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of a petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interest accrued after the filing of the petition and up to the time of the entry of such judgments.

Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against the estate.

United States Compiled Statutes, page 3447.

Section 1130.—DEBTS WHICH HAVE PRIORITY.

—The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or of the United States is entitled to priority.

In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

United States Compiled Statutes, pages 3447, 3448.

Amendments of 1909, page 1317.

Section 1131. — DECLARATION AND PAYMENT OF DIVIDENDS.—Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order. Provided, that the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed; and provided, further, that the final dividend shall not be declared within three months after the first dividend shall be declared.

The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors, if the estate equals so much, before such other creditors are paid any further dividends.

Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors, before creditors who have received a dividend in such court shall be paid any amounts.

United States Compiled Statutes, page 3448.
Amendments of 1909, pages 1315, 1316.

Section 1132.—UNCLAIMED DIVIDENDS.—Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt; provided, that in case unclaimed dividends belong to minors, such minors may have one year after arriving at majority to claim such dividends.

United States Compiled Statutes, pages 3448, 3449.

Section 1133.—LIENS.—A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person, shall be dissolved by the adjudication of such person to be a bankrupt, if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this law; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

All conveyances, transfers, assignments, or incumbrances of his property or any part thereof, made or given by a person adjudged a bankrupt, within four months prior to

the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, are null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or district in which such property is situate, shall be deemed null and void under this law, against a creditor of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

All levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt; and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt; unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. Provided, that nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment,

attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

United States Compiled Statutes, pages 3449, 3450.

Section 1134.—SET-OFFS AND COUNTERCLAIMS.

—In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor, the account shall be stated, and one debt shall be set off against the other, and the balance only shall be allowed or paid.

A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent or had committed an act of bankruptcy.

United States Compiled Statutes, page 3450.

Section 1135.—APPRAISAL AND SALE OF PROPERTY.—All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers. They shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; and it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

United States Compiled Statutes, page 3451.

PART XII.

AUTOMOBILE LAW OF CALIFORNIA.

Section 1136.—IMPORTANCE OF THE SUBJECT.

—California is the second state in the Union in the number of automobiles owned and used by its citizens. New York is first, California is second; and considering our beautiful climate, and the increased attention being paid to the building and condition of public highways, it is reasonable to expect that in a few years California, with relation to the ownership and use of motor vehicles, will be the first state in the Union. Consequently, the subject now given, "Automobile Law of California," is of very great importance and universal interest. In the following sections under the above subject will be found the law of California, so far as it has been enacted and decided in recent years.

Section 1137.—GENERAL LAW AND STATUTES.

—California has some statutes, laws passed regulating the running of automobiles, the licensing of chauffeurs, etc., which will be found in this subject. These statutory laws are not very many, and much of the law with reference to motor vehicles in this state, as elsewhere, rests upon general principles which include the rights and liabilities of those who own or operate automobiles. In stating the general laws just mentioned, and their application to the subject of automobiles in California, the author desires to acknowledge the great assistance received from a new work for lawyers published at Washington in 1911, entitled "Law Applied to Motor Vehicles," by Charles J. Babbitt.

Section 1138.—AUTOMOBILE DEFINED.—The word “automobile” is compounded of other words taken from the Greek and Latin languages, and modernized in the French language. “Auto” is taken from the Greek, and means *self*. “Mobile” originates from the Latin *mobilis*, *movable*, and comes to us from the French. The two joined make the new word, “automobile,” resulting in the expression of something movable, to which we attach by implication the idea of a vehicle.

In the statutory law of California, the phrase “motor vehicle” includes all vehicles propelled by any power other than muscular power.

General Law of California, page 636.

Section 1139.—REGISTRATION OF AUTOMOBILES.—Every owner of automobiles shall, for each automobile owned by him, file in the office of the Secretary of State a statement of his name and address, with a brief description of the vehicle to be registered, including the name of the maker, factory number, style of vehicle and motor power. Blanks are prepared and furnished by the Secretary of State for that purpose.

The Secretary of State must file the statement in his office, register the automobile in a book or index kept for the purpose, and assign it a descriptive number. Upon such registration being made, the Secretary of State will issue and deliver to the owner a seal, of aluminum or other suitable metal, circular in form and approximately two inches in diameter, which shall have stamped thereon the words “Registered Motor Vehicle No....., State of California,” with the registration number inserted therein; and this seal shall thereafter at all times be conspicuously displayed on the automobile to which the number has been assigned. Upon the sale of a motor vehicle, the vendor, except a manufacturer or dealer, shall within ten days return to the Secretary of State the registration seal affixed to such vehicle.

General Law of California, pages 636, 637.

Section 1140.—REGISTRATION FEES.—The fee for filing the owner's statement in the office of the Secretary of State and registering the automobile is \$2.00. If the automobile had been previously registered, the certificate issued thereon must be returned to the Secretary of State, and in lieu thereof the Secretary will issue to the owner a registration seal containing the number of such previous registration. The registration fee in this case is \$1.00.

General Law of California, page 637.

Section 1141.—DISPLAYING THE NUMBER.—Every automobile shall at all times have the number assigned to it displayed on the back, in such a manner as to be plainly visible; the numbers to be in Arabic numerals black on a white background, each not less than three inches in height, and each stroke to be in width not less than half an inch, and also as a part of such number the abbreviated name of the state in black on white ground, the letters to be not less than one inch in height.

General Law of California, page 637.

Section 1142.—MANUFACTURER'S OR DEALER'S REGISTRATION.—A manufacturer of or dealer in automobiles must register one vehicle of each style or type manufactured or dealt in by him, and he will be entitled to as many duplicate registration seals for each type or style so manufactured or dealt in as he may desire on payment of an additional fee of fifty cents for each duplicate seal. If a registration seal and the corresponding number is thereafter affixed to and displayed on each automobile of such type or style, while such automobile is being operated on the public highways, this will be deemed a compliance with the law until the automobile shall be sold or let for hire; but this provision does not apply to a motor vehicle employed by a manufacturer or dealer for private use or for hire.

General Law of California, page 637.

Section 1143.—UNLAWFUL USE OF PUBLIC HIGHWAYS PROHIBITED.—No automobile shall be used or operated upon the public highways which displays a

registration seal or number belonging to any other vehicle, or displays a fictitious registration seal or number. No motor vehicle shall be used or operated on the public highways unless the owner has complied in all respects with the laws of this state providing for registration; except that any person purchasing an automobile from the manufacturer, dealer, or other person, is allowed to operate it upon the public highways for a period of five days after the purchase and delivery thereof, provided that during such period such automobile bear the registration number and seal of the previous owner.

General Law of California, pages 637, 638.

Section 1144. — NON - RESIDENT OWNERS. — The provisions of the registration law do not apply to automobiles owned by non-residents of California, and only temporarily within this state, provided such non-resident owners have complied with any law requiring registration of owners of motor vehicles in force in the state, territory or federal district of their residence, and the registration number showing the initial of such state, territory or federal district is displayed on their automobile substantially as provided by the law of California.

General Law of California, page 638.

Section 1145.—CHAUFFEURS.—The word "chauffeur" is of French origin, meaning generally "a warmer, heater, stoker, fireman." In Webster's International Dictionary, supplement of 1904, the word is defined, "Chauffeur, literally a stoker, one who manages the running of an automobile." In the Standard Dictionary, a chauffeur is defined as being "One who drives or operates an automobile." In the statute law of California, it is stated that "chauffeur" shall mean any person operating a motor vehicle as mechanic, employee or for hire.

General Law of California, page 636.

Section 1146.—REGISTRATION OF CHAUFFEURS. —Every person desiring to operate a motor vehicle as a chauffeur must file in the office of the Secretary of State a

statement, which shall include his name and address, and the trade name and motive power of the motor vehicle or vehicles he is able to operate, and he must pay a registration fee of \$2.00. The Secretary of State must thereupon file such statement in his office and register such chauffeur in a book or index kept for that purpose, and assign him a number. The Secretary of State must also issue and deliver to the chauffeur a badge of aluminum or other suitable metal, oval in form, and the greater diameter of which shall not be more than two inches, and this badge must have stamped thereon the words, "Registered Chauffeur No....., State of California," with the registration number inserted therein. This badge must always be worn by the chauffeur upon his clothing, in a conspicuous place, at all times when he is operating a motor vehicle upon the public highways.

No registered chauffeur shall voluntarily permit any other person to wear his badge, nor shall any person while operating an automobile wear any badge belonging to another person, or a fictitious badge. Every person is prohibited from operating an automobile as a chauffeur upon a public highway, unless he shall have complied in all respects with the requirements of this law.

Any person violating the provisions of this law shall be deemed guilty of a misdemeanor, and upon conviction shall be punishable by fine not exceeding \$100 or by imprisonment not exceeding thirty days, or both, for the first offense; and punishable by a fine of not less than \$50 nor more than \$100, or imprisonment not exceeding thirty days, or both, for a second offense; and punishable by a fine of not less than \$100, nor more than \$250, or imprisonment not exceeding thirty days, or both, for a third or subsequent offense.

General Law of California, pages 640, 641.

Section 1147.—THE LAW OF THE ROAD.—Highways are public roads, which every citizen has a right to use. The rights of all travelers on the highway are reciprocal. For instance, the law of the road requires that every man

restrain the speed of his vehicle within such bounds as will not endanger others, considering the place and circumstances. The use of a highway is not a privilege, but a right, limited by the rights of others, and to be exercised in a reasonable manner.

The law does not denounce motor carriages, as such, on the public highways. For so long as they are constructed and propelled in a manner consistent with the use of the highway, and are calculated to subserve the public as a beneficial means of transportation, with reasonable safety to travelers by ordinary means, they have an equal right with other vehicles in common use to occupy the streets and roads.

(a) **Statutory Regulations.**—The State of California, and municipalities within the state, have the right to make regulations which shall govern the use of public highways by automobiles. While the owner of an automobile has the same right to use the highways as owners of other vehicles have, where the statute requires certain things to be done by him, he must obey. And in operating his machine on the highways he must not only exercise reasonable care and caution, for the safety of others, but he must do what the statute requires when the conditions therein referred to arise.

(b) **Passing to the Right.**—Under the common law, the law of the road is based upon custom. The term "law of the road," or "rule of the road," means the custom of a country with regard to the passing of those who meet on the highway. It is the custom in Great Britain for those who meet on the highway to pass to the left. Generally in continental Europe, and everywhere in the United States, teams or riders approaching each other on the highway are expected to keep to the right of the center of the traveled part of the road. In most of the United States laws have been passed regulating this matter. In California the statute reads as follows:

"Whenever a person operating a motor vehicle shall meet on a public highway any other person riding or driving a horse or horses or other livestock, or any other vehicles, the

person so operating such motor vehicle shall seasonably turn the same to the right of the center of such highway, so as to pass without interference. Any such person so operating a motor vehicle, shall, on overtaking any such horse, livestock or other vehicle, pass on the left side thereof, and the rider or driver of such horse, livestock or other vehicle, shall, as soon as practicable, turn to the right so as to allow free passage on the left. Any such person so operating a motor vehicle shall, at the intersection of public highways, keep to the right of the intersection of the centers of such highways when turning to the right, and pass to the right of such intersection when turning to the left."

General Law of California, page 639.

(c) **Brakes and Other Appliances.**—Safety appliances for automobiles are required by statute. Every automobile, while in use on a public highway in this state, must be provided with good and efficient brakes, and also with a suitable bell, horn or other signal; and must be so constructed as to exhibit, during the period from one hour after sunset to one hour before sunrise, two lamps showing white lights visible within a reasonable distance in the direction towards which it is proceeding, showing the registered number of the automobile in separate Arabic numerals, not less than one inch in height and each stroke not less than one-quarter of an inch in width, and also a red light visible in the reverse direction.

General Law of California, page 639.

(d) **Speed Limitations.**—To persons riding along or crossing our public roads, and especially our city streets, the rapidly moving automobile is a constant source of danger. While owners of automobiles have the right to drive them upon public streets, yet the proper protection of the equal rights of all to use the highways necessarily requires the adoption of different regulations for the different methods of such use; and what may be a safe rate of speed at which to ride a bicycle or drive a horse may be an unreasonably

rapid rate at which to drive an automobile in the same place. For the reason stated, and others which might be given, the driver of an automobile at a high rate of speed through city streets at times when and places where other vehicles are constantly passing, and men, women and children are liable to be crossing or around corners on the streets, or in passing by street cars from which passengers have just alighted or may be about to alight, or in other similar places and situations where people are liable to fail to observe an approaching automobile, is bound to take notice of the peculiar danger of collisions in such places. He cannot secure himself from liability by merely sounding his horn. He must run his car only at such speed as will enable him to stop it to avoid collisions. If he fails to do so, he is responsible for the damage he thereby causes. The statute law of California provides, that no person shall operate a motor vehicle on a public highway at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person or the safety of any property; or in any event on any public highway, where the territory contiguous thereto is closely built up, at a greater rate than one mile in six minutes, or elsewhere in any incorporated city or town at a greater rate than one mile in four minutes, or elsewhere outside of any incorporated city or county, city or town, at a greater rate than one mile in three minutes.

General Law of California, page 638.

(e) **Approaching or Running Over Bridge.**—Upon approaching a bridge, dam, sharp curve, or steep descent, and also in traversing such bridge, dam, curve, or descent, a person operating a motor vehicle shall have it under control, and operate it at a rate of speed not exceeding one mile in fifteen minutes, and upon approaching a crossing of intersecting highways, at a speed that is reasonable and proper, having regard to the traffic then on such highway and the safety of the public.

(f) **Warning of Approach.**—Upon approaching a person walking in the highway, or a horse or horses, or other livestock being ridden, led or driven thereon, a person operating a motor vehicle shall give reasonable warning of such approach, and use every reasonable precaution to insure the safety of such person or animal, and in the cases of horses or other livestock to prevent frightening the same.

(g) **Passing Frightened Animals.**—A person operating a motor vehicle shall, at request or on signal by putting up the hand from a person riding, leading or driving a restive horse or horses, or other livestock, bring such motor vehicle immediately to a stop, and, if traveling in the opposite direction, remain stationary so long as may be reasonable to allow such animal to pass, and, if traveling in the same direction, use reasonable caution in thereafter passing such horse or animal; provided, that in case such horse or animal appears badly frightened, or the person operating such motor vehicle is requested to do so, such person shall cause the motor of such vehicle to cease running so long as shall be reasonably necessary to prevent accident and insure safety to others.

General Law of California, page 638.

Section 1148.—DUTY OF OPERATOR IN CASE OF ACCIDENT.—In case of accident or injury to a person or property in public highways, due to the operation thereon of a motor vehicle, the person operating such vehicle shall stop, and, upon request of the person, give such person his name and address, and, if not the owner, the name and address of such owner.

General Law of California, page 639.

Section 1149.—SETTING ASIDE PUBLIC HIGHWAYS FOR SPEED TESTS OR RACES.—Local authorities may set aside for a given time a specified public highway for speed tests or races, to be conducted under proper restrictions for the safety of the public.

General Law of California, page 639.

Section 1150.—DAMAGES FOR NEGLIGENCE.—

Where a person or property are injured by the negligent running of an automobile, the owner and the chauffeur, or both, are liable for damages, but the owner is responsible for the act of his chauffeur only when such act is done in the course of his employment. Therefore, if the chauffeur should take the machine out, without the consent or knowledge of the owner, and at a time when he was prohibited from taking it out, the owner would not be responsible, for the chauffeur would not be acting at such time in the course of his employment. The owner is not responsible for the act of a borrower of his machine. But the owner is responsible for the act of a friend who may be driving for him, where the accident is caused by the carelessness, negligence, or the incompetence of such friend. If a person other than the owner has actual control of the machine, and employs the chauffeur, at the time of the accident, he, and not the owner, is responsible for damages.

Section 1151.—WHAT IS NEGLIGENCE.—What acts on the part of the person operating a machine will constitute negligence depends upon the peculiar circumstances of each case. If the operator fails or refuses to do what the law requires, in the operation of his machine, this of itself will constitute negligence; or if he fails to observe a degree of care on the streets or highways which an ordinary prudent man would be expected to observe, this would be negligence on his part for which he will be liable. In all cases, however, it is for the jury to say whether the operator was in fact negligent, or whether the person receiving an injury was himself careless and contributed to his own hurt.

Section 1152.—RELATION BETWEEN EMPLOYER AND CHAUFFEUR.—The acts of the chauffeur, in operating an automobile, within the authority of his employment, are the acts of a servant. The relation of master and servant exists between the owner and his employee, and in operating

the machine the chauffeur is the agent of the employer, and the employer is responsible for the acts of his agent. In civil actions, the person injured may sue the chauffeur or the owner, or both, for damages.

Section 1153.—CONFLICT OF ORDERS AND DUTY

—It is no defense for the chauffeur to plead that his violation of law or duty was in obedience to the commands of his employer. The chauffeur occasionally finds himself between the horns of a dilemma. Such a situation arises when he receives an order from his employer, to do that which he knows from his knowledge of the law to be a violation thereof. The persistency of the employer may be such as to threaten the loss of position in case of disobedience. The dilemma presents itself to the chauffeur in this way: "If I disobey the order and obey the law, I lose my position. If I obey the order disobeying the law, I risk a chance of being caught in the latter for the sake of a certainty of saving my position." Obedience to the law should control the chauffeur in any view of the matter, because if he loses his position by disobedience to order, he still has his license, and may be employed again; but if he loses his license, not only does he lose his position, but he also loses the chance of being employed by someone else. In any event, if he disobeys the laws he runs an obvious risk, and it does not lie with him to complain if the law finds him out.

Babbitt's Law Applied to Motor Vehicles, page 204.

Section 1154.—RESPONSIBILITY OF TAXICAB DRIVERS.

—The chauffeur of a taxicab, or of a sight-seeing motor omnibus, will be held to the exercise of more abundant caution and to the exhibition of a finer skill than would be required of the operator of a private car. This is upon the theory that by reason of his constant practice, he is expected to obtain the highest attainable dexterity.

Section 1155.—DEMANDING OR ACCEPTING A COMMISSION OR BONUS.—Good faith demands that an agent should not without the knowledge and consent of the principal make any profit out of the agency, beyond his stipulated pay. If, therefore, the chauffeur, who under general or special instructions should purchase supplies or order repairs, demands or accepts a commission or bonus, or other fee or reward, from the person to whom the order is given or from whom the purchase is made, he is guilty of a violation of his duty to his employer.

Section 1156.—ORDERING SUPPLIES AND REPAIRS.—A chauffeur by virtue of his position has no authority to contract for general repairs. In cases of sudden or unexpected breakdown, or "road trouble," he may bind his employer in ordering such repairs of a temporary character, or necessary supplies, as will enable him to continue his journey; but he has at no time implied authority to make contracts for repairs of a general or permanent nature.

Section 1157.—PLACING CAR IN STORAGE.—It is the chauffeur's duty, in case of a breakdown on the road, to put his employer's car for safe keeping in some proper place, and the employer will be responsible for the proper expenses of such storage.

Section 1158.—GENERAL RULES AS TO THE EXERCISE OF CARE.—Travelers must always exercise at least ordinary care and skill, being guilty of no want of proper diligence, nor of rashness or mismanagement. In automobile cases, the burden usually rests heavily on the motorist, by reason of the character of the vehicle. The meaning of the word care, and what constitutes due care, are relative. They may mean one thing on a country road, and another thing on the crowded street of a city. The operator of an automobile must use reasonable care and skill, and a traveler on foot or in another vehicle must also take care of himself. A public highway is open in all its length and breadth to the reasonable, common and equal use of the people, on foot

or in vehicles. The owner of an automobile has the same right as the owner of other vehicles to use the highway, and like them he must exercise reasonable care and caution for the safety of others. A traveler on foot has the same right to the use of the public highway as an automobile or any other vehicle. In using such highway all persons are bound to the exercise of reasonable care to prevent accidents. Such care must be in proportion to the danger in each case. There is a like duty of exercising reasonable care on the part of all. The person having the management of the automobile, and the traveler on foot, are both required to use such reasonable care, circumspection, prudence, and discretion as circumstances require; an increase of care being required where there is an increase of danger; and both are bound to the reasonable use of all their senses for the prevention of accident, and to the exercise of all such reasonable caution as ordinary careful and prudent persons would exercise under the same circumstances. The more dangerous the character of the vehicle or machine, and the greater its liability to do injury to others, the greater degree of care and caution is required in its use and operation. The person traveling by foot on a public road is required to use reasonable care to avoid collision with an automobile, and if he saw the automobile before it struck him, or by the reasonable use of his senses could have seen it, in time to avoid the injury, it was his duty to get out of the way. It is the duty of the motorist to keep a vigilant watch ahead for other vehicles, and on the first appearance of danger to take proper steps to avoid it.

Section 1159.—CARE WHILE TRAVELING AT NIGHT.—In running a car at night, the exercise of ordinary care requires greater vigilance than in the daytime, particularly in a strange locality; and it is negligent to run an automobile without lights sufficient to enable the traveler to see objects ahead of him. The same principle applies where rain, mist, or fog prevail to obscure the outlook. In

a case at Los Angeles, the evidence showed that at about six o'clock P. M., while a woman was crossing Main Street, she was struck and knocked down by an automobile operated by defendant, which she did not see until it was upon her, as a result of which she sustained serious injuries; and that it was dark at the time, and before attempting to cross the street, she looked up and down the street and saw no vehicle approaching. There were no lights on the machine. There was introduced in evidence an ordinance of the city of Los Angeles, making it unlawful to operate a machine upon the streets of the city between one-half hour after sunset and one-half hour before sunrise, unless such automobile displayed a lamp or lantern throwing a white light toward the front and a red light toward the rear of the machine. On the day of the collision the sun set at 4:50 P. M. The court instructed the jury that a failure to comply with the municipal ordinance was negligent in itself; and that if they found the plaintiff had not done anything to bring the injury upon herself, they must give a verdict of damages against the defendant. The District Court of Appeals, in deciding the case, said that it must assume, in the absence of any proof to the contrary, that plaintiff was in the possession of the sense of seeing, and hence, had the car possessed the lights required by the ordinance, she might have seen the car approach and avoided the collision. Such evidently was the view entertained by the jury and they were justified in their verdict for damages. (Decided by the District Court of Appeals, in the case of Fenn vs. Clark, which decision is printed in Volume 103 of the Pacific Reporter, page 944.)

Section 1160.—CLIMBING OR HANGING ON BEHIND.—It is not the duty of a driver of an automobile to keep a lookout behind, so as to see whether children or adults are riding on the rear end. Instead, his duty is to look ahead, to avoid collision with persons or with other vehicles. Nor does he owe even to children any duty to prevent them from climbing upon his vehicle while in motion; but if his

machine should be standing still, in the street or at the curb, it be would be his duty as far as possible to prevent children from getting upon or occupying the vehicle.

Section 1161.—FAILURE TO SLOW DOWN IN CASE OF ACCIDENT.—Safety must always be reasonable and proper, having regard to the conditions prevailing at the time. No blowing of a horn, or of a whistle, nor the ringing of a bell or gong is sufficient, if unaccompanied by an attempt to slow the speed, when the circumstances are such as to demand a slower speed to avoid an accident.

Section 1162.—DRIVING ON WRONG SIDE OF ROAD.—The law does not expressly require an automobile to use any particular portion of the traveled part of a road, except in the case of meeting another traveler, or crossing a bridge, when the statute requires that he should turn in a certain direction. He is not obliged to keep on the right rather than on the left side, unless he is about to meet and pass another vehicle or a traveler on foot. Until a person sees a traveler approach, he is, therefore, in the exercise of a legal right in traveling on the left side of the road. It is only when the contingency stated in the statute arises that he is obliged to turn to the right. But custom in California, as well as in most of the other states of the Union, makes the right side of the road the one upon which an automobile should be driven in its own direction. And if the driver chooses to run his machine at a high rate of speed on the wrong side of the road, which would be the driver's left hand side of the way, the driver is bound to exercise greater diligence to avoid other travelers than if he were on the right side. And his failure to keep on the right side of the road, or, in other words, the fact that he was running upon the wrong side of the way, would be evidence tending to show that he was at fault, in a suit for damages against him.

When traveling close to the curb, the driver of an automobile must be observant, not only of what is directly in

front of him, but of pedestrians who are on the sidewalk and who may step directly in front of the car; and especially is this so when the operator is on the wrong side of the road and near the curb, because the foot passengers are less likely to look in that direction for an approaching vehicle.

Section 1163.—INTOXICATION OF DRIVER.—

Any person operating or driving an automobile, motor cycle or other motor vehicle who becomes or is intoxicated while so engaged in operating or driving such automobile, motor cycle or other motor vehicle, shall be guilty of a misdemeanor.

Act of the Legislature, approved March 1, 1911.

Any person operating or driving an automobile, motor cycle, or other motor vehicle, who becomes or is intoxicated while so engaged in operating or driving such automobile, motor cycle or other motor vehicle, and who by reason of such intoxication does any act, or neglects any duty imposed by law, which act or neglect of duty causes the death of, or bodily injury to, any person, shall be punishable by imprisonment in the state's prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding \$500, or by both such fine and imprisonment.

Act of the Legislature, approved March 7, 1911.

Section 1164.—COLLISION WITH OTHER VEHICLES.—Whenever an automobile, motor cycle, or other motor vehicle strikes any person, or collides with any vehicle containing a person, the driver of, and all persons in such automobile, motor cycle or other motor vehicle who have or assume authority over such driver, shall immediately cause such automobile, motor cycle or other motor vehicle to stop; and shall forthwith render to the person struck, or to the occupants of such vehicle, all needed assistance, including the carrying of such person or occupant to a physician or surgeon for medical or surgical treatment, if such treatment seems to be required, or if such carrying is requested by the person

struck or occupying such vehicle; and such driver and person having or assuming authority over him, shall forthwith give to the occupants of such vehicle or person struck, the number of such automobile, motor cycle or other motor vehicle, with the name and address of the driver and of each person in such automobile, motor cycle or other motor vehicle, at the time of such striking or collision. Any person violating any provision of this law is punishable by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five thousand dollars, or by both such fine and imprisonment.

Act of the Legislature, approved February 20, 1911.

Section 1165.—JUMPING FROM THE CAR.—The duty of the operator of an automobile, at times of emergency and peril, is like those of a locomotive engineer similarly situated. If the engineer jumps from his station needlessly, if he abandons his post when danger threatens whereby the lives of others are sacrificed, which he might have saved by remaining, he is culpable. The same may be said of the automobile operator. He may jump to save his own life, if it appears to him that death is imminent, and the law will not blame him. But if he believes his duty requires him to do what he can to save those under his charge, and he braves death in the discharge of that duty, the law has for him no censure, but has, on the contrary, high commendation and respect.

Section 1166.—LEAVING MACHINE UNGUARDED AT STREET CURB.—The operation of an automobile upon the crowded streets of a city necessitates exceeding carefulness on the part of the operator. When the person in charge of an automobile leaves it on the street, at the curb or elsewhere, he is not required, before leaving it, to chain the machine to a post, or in some other way to fasten it so that it would be impossible for it to be started by a third person. But it is his duty to take all reasonable care that

no injury will result to the persons or property of others during the time the machine is there, especially if the car be left standing alone with no person in charge of it.

Section 1167.—PARTY DRIVING A LIGHT VEHICLE BOUND TO GIVE WAY TO A HEAVY LOADED ONE.—The driver of a light team is bound to give way or get out of the way of the party who is driving a heavily loaded team. So in the actual use of the highway, each may use it to his own best advantage, but with a just regard to a like right of others. Persons in light carriages, for the conveyance of persons only, have occasion and of course a right when not expressly limited by law, to travel at a high rate of speed so that they do not endanger others. So in regard to the drivers of fast and slow carriages, each must respect the rights of the other. If a heavily loaded team be passing along a street wide enough only for one carriage, and an automobile follows, the last must for the time being be restrained in its speed, because of the narrowness of the way and the ordinary slowness of the team ahead. If parties, those traveling in the same direction, should come to a portion of the way wide enough for carriages to pass each other, it is obvious that if the driver of the heavy team would turn to either side it would give the automobile room to pass, whereas, if he should keep the middle, the space on either side would not permit any carriage to pass. But if no impediment should intervene and no circumstances should render it dangerous for the driver of the team to bear off, it would be his duty to do so, although it might suit his convenience better to keep in the middle; and his refusal thus to bear off would be an abuse of his own equal and common right, for which, if injurious to another, an action for damages would lie.

Section 1168.—OVERTAKING AND PASSING.—The operator of an automobile on approaching from behind a vehicle going in the same direction, and intending to

pass it on the proper side, should seasonably sound his horn—not only to warn the driver of the vehicle ahead of such intention, but also to keep on his own side of the road. Under such circumstances the passing vehicle should not unduly crowd the vehicle being passed. If no impediment intervenes, the driver ahead is bound to give way to the vehicle behind wishing to pass.

Section 1169.—CROSSING STREETS AND TURNING CORNERS.—A person driving a vehicle across a street is bound to see that it does not interfere with others in the proper exercise of their rights of passage. The situation is the same in cases where one vehicle is passing along one street, and another is turning into it from another or intersecting street. In all such cases there is no fixed regulation, and the rule of the common law prevails, requiring due care on the part of both. When an automobile coming out of one street turns sharply to the left hand, in other language, “cuts the corner,” the motorist fails in his duty, and is therefore guilty of negligence.

Section 1170.—RUNNING OVER PEDESTRIANS.—Pedestrians have a right to travel anywhere upon a highway, and are not confined in the right to cross-walks. Persons driving automobiles along the road are liable if they do not take care so as to avoid driving against the foot passengers who are passing on the road. A man has a right to walk in the road, if he pleases. It is a way for foot passengers, as well as for carriages. All persons have a right to walk in the road, and are entitled to the exercise of reasonable care on the part of those who drive automobiles on it. But pedestrians, as well as all others, are bound to exercise care according to the circumstances, and especially bound to look where they are going. It is negligence for a foot traveler to attempt to cross the public thoroughfare ahead of vehicles of any kind, upon nice calculations of the chances of injury. If such attempt be made, and the calculations fail to the person's harm, he can have no redress for injuries

received in the mistaken effort. It is not the exercise of common or ordinary care on his part. When alighting from a street car, a person is not bound as a matter of law to look both ways; but he must look where he is going, and he must not walk blindly into danger. A driver of an automobile has the right to suppose that a person, whether on foot or in a vehicle, when duly warned in sufficient season, will not cross his path, or attempt to do so; but if he does make such attempt, it is the duty of the driver to do everything in his power to avoid an accident. When two automobiles are passing, it is the duty of each driver to look out for pedestrians suddenly appearing from behind the other automobile.

Section 1171.—INJURY OF PERSONS ENGAGED AT WORK IN THE ROADWAY.—One who carelessly injures a laborer or other person whose vocation calls upon him to be in the highway, is liable for the injury inflicted. In Los Angeles, an employee of the Los Angeles Street Railroad Company was oiling the tracks on the street, in pursuance of his employment. While he was so engaged, the driver of an automobile proceeding along East First Street, at a high rate of speed, carelessly and negligently ran into him. The jury gave a verdict for the plaintiff for \$7000 damages. The District Court of Appeals affirmed the judgment, and said that under the circumstances it was the duty of the driver of the automobile to proceed at a slow pace, if he were to escape liability even to a pedestrian for injuries done to him. It appears that the plaintiff in this case was walking backward, but that he had to go backward in the performance of his work. The court says: "Had a pedestrian with no occupation requiring his presence in that part of the street opened to the use of vehicles been struck by a passing vehicle, while he was backing along the road not looking to see where he was going, it is clear he would have been guilty of contributory negligence; but the rights of a laborer whose duty requires him to be in the

roadway, cannot be determined by the same rule. Not that he is bound to exercise any less care, but because the care to be exercised must be determined from a different standpoint. The proper discharge of his duties required the plaintiff to move backward along the road in which he was oiling. He did this in such a manner as to face in the direction from which any car or vehicle obeying the law of the road would approach, and also looked in the other direction often enough to satisfy the trial court that he was exercising due care at the time he was struck. His care or want of care was a fact to be determined from all the circumstances surrounding him at the time." (Decided by the District Court of Appeals, in the case of *King vs. Green*, which decision is printed in Volume 94 of the *Pacific Reporter*, page 777.)

Section 1172.—PERSONS UNDER DISABILITIES.

—At times a greater degree of care is demanded of an operator of an automobile than at other times. Thus, if a person under obvious disability, such as old age, infancy, lameness, drunkenness, or the like, is crossing the road, the duty of avoiding him is greater than if he were a person of ordinary capacity. Care and caution must be exercised in proportion to the apparent risk.

Babbitt's Law Applied to Motor Vehicles, page 279.

Section 1173.—CHILDREN IN THE STREET.—The rule of law is, that streets and highways are made for the use of all travelers, children as well as others. But in the case of children, the question of negligence becomes largely a question of due care on the part of the person having charge of the child, allowing it to be in the place where the injury was received. In the case of children who are of an age to go about unattended, to school and the like, the rule requires of them the use of such discretion as such children have—not so much as in the case of an adult, but only the ordinary care of school children. The operator

of a car in a street where there are children is required to manage his car with reference to all the risks that may reasonably be expected, and among these may be reckoned the risks arising from the heedlessness and indiscretion of children in the street. Being or playing upon a street is not of itself contributory negligence in a child of tender years. If the child is of sufficient age and discretion to be in the street alone, then an error of judgment, based on such experience and discretion as a very young child would naturally possess, is not negligence on the child's part, particularly if the error in judgment was the result of circumstances calculated to inspire fright, such as the unexpected or sudden appearance of an automobile.

Section 1174.—DEFENSE OF NOT EXCEEDING SPEED LIMITATIONS.—No owner or operator of an

automobile is exempt from liability for a collision in a public street by simply showing that at the time of the accident he did not run at a rate of speed exceeding the limit allowed by state law or city ordinances. On the contrary, no matter how great the rate of speed may be, which the general law and city ordinances permit, the operator of an automobile still remains bound to anticipate that he may meet persons on any point in a public street, and he must keep a proper lookout for them, and keep his machine under such control as will enable him to avoid collision with another person also using proper care and caution. If necessary, he must slow up, and even stop. No blowing of a horn or of a whistle, nor the ringing of a bell, without an attempt to slow the speed is sufficient if the circumstances at a given point demand that the speed should be slackened or the machine be stopped, and where such a course is practicable. The true test is, that the operator must use all the care and caution which a careful and prudent driver would have exercised under the same circumstances. The idea prevails among some motor drivers, that when once they have sounded the horn they are justified in going at any rate of

speed, and that people are bound to get out of their way; but the law will not excuse the owner or driver of an automobile for any such reason.

Section 1175.—EVIDENCE OF OVER-SPEEDING.

—In cases where drivers or owners are being prosecuted for over-speeding, the testimony of a witness who has had experience in timing or knowing the speed of motor vehicles is evidence of better quality than that of one who has not. If the speed was timed over a known or measured distance by a clock or time piece, or by a stop watch or other mechanical device, in the possession of a person skilled in managing it, such evidence would have greater weight than that of a witness who spoke from impression only.

Section 1176.—RESPONSIBILITY OF OWNER FOR NEGLIGENCE OF DRIVER.

—The general rule in this country, as to the extent of the liability of the master for the act of his servant, is, that if the act is done without the authority of the master and not for the purpose of obeying his orders or doing his work, then he is not responsible; but if it is done in the execution of the authority given by the master and for the purpose of performing what he has directed, then he is responsible, whether the act be negligent or wilful. The test to determine whether a master is liable to a stranger for his servant's misconduct, is to inquire whether the latter was doing what he was employed to do at the time he caused the injury complained of. If he was, the fact that he was not doing it in the way expected is immaterial. But, if at the time he did the act which caused the injury, he was not acting within the scope of his employment, the master is not liable. The master is one who has the supreme charge, control and direction of the servant, and whose will the servant represents not merely in the work, but in all its details. In strictness, the servant is one who for a consideration engages in the service of another and undertakes to serve his direction in some lawful business. Therefore, if the master is himself driving his car, and from

want of skill causes injury to a passerby, he is, of course, responsible for that want of skill. If, instead of driving the car with his own hands, he employs a chauffeur to drive it, the chauffeur is but an instrument set in motion by the master. It was the master's will that the chauffeur should drive, and whatever the chauffeur does, in order to give effect to his master's will, may be treated as the act of the master. The acts of the chauffeur, when operating an automobile, within the authority of his employment, are the acts of a servant. The relation of master and servant exists between the chauffeur and his employer, and the employer is responsible for the acts of his servant done within the limits of his employment.

Section 1177.—RESPONSIBILITY FOR AN OPERATOR WHO IS NOT HIRED.—When the car is being driven by a friend upon invitation or by permission, if the owner is present, the law presumes that he has retained control of the car, and the law would imply an agency upon the part of the friend, which would render the owner liable for his acts.

Section 1178.—LIABILITY OF CORPORATIONS.—Corporations, like individuals, are liable as employers, for the acts of their servants in operating automobiles on the roads or streets in pursuance of their employment.

Section 1179.—EMPLOYER'S RESPONSIBILITY FOR UNAUTHORIZED USE OF CAR.—The chauffeur has no right to use his employer's car to serve his own needs and purpose, whether of business or pleasure. Such acts are wholly outside the relation of master and servant, and in such cases the master cannot be held liable for the wrongful acts of the servant, for they are clearly outside of the employment. If a chauffeur takes out the car, without his employer's knowledge or consent, for a joy ride or frolic of his own, or if he so uses it outside of his employment for his own business, the employer is not liable for damages caused

by such use. The Legislature of California has in consequence enacted a statute making the unauthorized use of an automobile a crime, punishable by severe penalties.

Section 1180.—UNLAWFUL USE OF AUTOMOBILES.—Any person who shall, without the permission of the owner thereof, take any automobile for the purpose of temporarily using or operating the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding \$200, or by imprisonment not exceeding three months, or by both such fine and imprisonment.

Every owner or manager of an automobile garage, or any agent or employee of such owner or manager, or any other person, having the care, custody or possession of any automobile, who takes, hires, runs, drives or uses such automobile, or who takes or leaves therefrom any part thereof, without the owner's consent, is punishable by a fine not exceeding \$1000, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Penal Code, Sections 499b, 499c.

Section 1181.—USE OF CAR BY BORROWER.—When the owner of an automobile merely permits another to use it, the latter does not thereby become the agent or servant of the former. Where the owner loans his car to a person over whom he had no direction or control at the time of the accident, he is not held liable for the mere loaning. The owner of a vehicle is not liable for an injury caused by the negligent driving of an operator if the car was not used at the time in the owner's business, nor under his control or management.

Section 1182.—OWNER'S LIABILITY FOR INJURY TO CHAUFFEUR.—If the owner and his chauffeur are both in the car, and the owner is negligently driving, and an accident occurs, the owner will be liable for damages for injuries to the chauffeur. But if the chauffeur is driving, he

cannot recover damages from his employer caused by his own negligent driving. And the chauffeur undertakes the risk of the employment. He cannot recover damages from his employer for an injury springing from a defect in a machine for the safe condition of which he himself is responsible. He is deemed to undertake the risk of a dangerous work. He is held to assume the ordinary risks of the business upon which he enters, so far as those dangers are known to him, or should be readily discernable by a person of his age and capacity in the exercise of ordinary care. Notwithstanding the general rule is that the master is bound to use due care to furnish safe and sound materials, machinery, etc., yet the servant assumes the risks of obvious defects in things which he voluntarily uses, if his work consists in dealing with dangerous, unsafe or unsound things known to him to be so, or obviously so, and which by the very nature of the business must be used while in that condition.

Section 1183.—CRIMINAL LIABILITY OF EMPLOYER.—A master is not, generally speaking, criminally responsible for the acts of his servants, unless he expressly commands the act to be done; for in criminal cases they must each answer for their own acts, and stand or fall in their own behalf; and where one employs another in doing a thing, and there are several ways of doing it, one criminal and another innocent, and he does it in a criminal manner, the employer is not responsible.

But where one man expressly orders another to do an illegal act, the employer is accountable for that act. Whether or not the person employed is also criminally responsible must depend upon the circumstances.

If, though the actual doer of the deed be a servant, the master stands by and sees and assents to the committal of the offense by the servant, or chooses to refrain from exercising the authority which he might have exercised to prevent the offense being committed, the master will be criminally liable.

Smith's Master and Servant, fifth edition, page 266.

Section 1184.—GARAGES AND GARAGE KEEPERS.

—The word “garage” is of French origin, and signifies a depot for the storage or repairs of motor cars. And in this country it is often used to mean a place not only for the storage and repair of cars, but also for the sale of automobiles. The garage occupies with relation to automobiles the same place that livery stables do with respect to horses.

Section 1185.—RELATION OF GARAGE KEEPER TO HIS CUSTOMER.

—The storage of an automobile in a garage constitutes the keeper a bailee for hire. The liability of the bailee in this class of bailments is for the care and custody of the property placed in his possession and control; it therefore follows, that his liability does not begin until he has the possession and control of the property, and continues until the possession and control is surrendered to the bailor, or he assigns, or to the rightful owner. The garage keeper holds the property for no other purpose than to care for it during the continuance of the relation in accordance with the contract, and to redeliver it to the bailor upon the termination of the contract. He has no title to the property except the possessory interest given him as bailee, and his right to the possession ceases whenever he is guilty of fraud or bad faith, or any misuse of the property. The contract for the storage can be terminated at the will of the person putting the car into the garage. The garage keeper must at all times upon reasonable demand and notice be ready to deliver the property to the person who placed it with him.

Section 1186.—FAILURE TO REDELIVER TO CUSTOMER.

—Not only is the garage keeper required to deliver the car he has had in his possession to the bailor at the termination of the bailment, but for a misdelivery, whether by mistake or negligence, he will be liable for damages. For a mistake or negligence in the performance of his duty which renders it impossible for him to deliver the property, he will be held accountable the same as if

he had converted the property to his own use. He will be held to know who his bailor is, and can have no legal reason for making a mistake in delivery.

Van Zile on Bailments, Second Edition, Section 208.

Section 1187.—LIABILITY FOR THEFT OF ARTICLES LEFT IN GARAGE.—The garage keeper is bound to exercise ordinary care and prudence according to the circumstances, regarding goods entrusted to him. This liability extends not only to the storage of the automobile itself, but, also to the goods or property of the owner left in connection with the machine, even though responsibility for such goods is not covered by the express terms of the bailment. But it is doubtful if the garage keeper would be liable for lost articles, left in the car, such as robes, coats, etc., unless his attention were especially called to them when the car was brought in. If, however, a car is brought into a garage, and the garage keeper allows it to be left in the garage with such articles in it, with notice that they are there, he will be liable for the value of such articles if they are stolen while in his place.

Section 1188.—LIABILITY OF GARAGE KEEPERS FOR DAMAGE TO CAR TAKEN OUT WITHOUT LEAVE.—The criminal liability of a garage keeper who takes, hires, runs or uses an automobile stored with him, without the owner's consent, is stated in section 1180, and is defined by the Penal Code, sections 499b, 499c. The garage keeper will be liable in a civil action for damages, if by reason of his negligence the car is taken out of the garage without the owner's consent, and damaged on the road. It is the duty of the garage keeper to take reasonable care of the car.

Section 1189.—LIABILITY FOR LOSS OF CAR.—The garage keeper is not liable for loss of a car that is caused, (1) by the act of God, as by lightning, earthquake,

tornadoes, storms, and the like; or (2) by the act of the public enemy; or (3) by unavoidable accident, as by fire, burglary, etc., unless by exercising ordinary diligence such loss could have been averted. The garage keeper is bound to maintain a safe building, with reasonable care and guard of the property, and he is bound to maintain reasonable protection against fire. If he does not do this, and by reason of an unsafe building, or by reason of fire which ordinary prudence would have prevented or put out, or by reason of theft of the car, which could have been prevented by ordinary care on the garage keeper's part, he will be liable for the loss of the car by any of these events. He is not an insurer against loss, and if he keeps a safe house, and uses the care in keeping the car and guarding it which an ordinarily prudent man should use under the same circumstances, he will not be liable, even though burglars should break in and drive it away, or an earthquake should tumble the building down about it and break it up, or a fire should sweep away the garage and destroy its contents.

Section 1190.—LIABILITY AS A RENTER OF MACHINES.—The garage keeper is not a common carrier, merely because he keeps machines for hire. But if he lets a car, it then becomes his duty to exercise that degree of care and skill which a prudent man, having regard to the circumstances, would exercise. It is his duty to provide a safe car; he is bound to know the condition of the car he sends out of his garage on hire; and if he sends out a chauffeur with a car he is bound to provide a competent chauffeur. In a business involving the personal safety and lives of others, due care, reasonable diligence, is nothing less than the most watchful care and the most active diligence, and anything short of this is negligence and carelessness. If a garage keeper, therefore, should send out an unsafe car, and it should break down on the road and injure the person to whom he let it, it would be no defense on his part that he did not know that defect in the machine which

caused the breakdown. He is bound at all times to know the condition of his machines. It is no excuse for a garage keeper that he did not know of any defect, if he could have known it by reasonable examination and inspection. It is presumed that he can at all times, by examination and inspection of his machines, know their condition; and this being so, it is the same as if he did know it, so far as regards the lessee's right to recover for damages when injured.

Section 1191.—LIABILITY OF LESSEE FOR CARE OF HIRED AUTOMOBILE.—The hirer of an automobile is liable to the garage keeper from whom he hired the machine, for the want of reasonable care and skill in driving, and for failure to exercise such prudence and caution as the circumstances require. If a person hires an automobile from a garage, and breaks it up or otherwise damages it by unskillful or reckless driving, leading to a collision or other cause of damage, he will be liable to the garage keeper for whatever damages the latter sustains. If the garage keeper must be careful in letting a car, it is no less true that the hirer must also be careful in using it.

Babbitt's *The Law Applied to Motor Vehicles*, pages 515, 516.

Section 1192.—LIABILITY FOR REPAIR WORK.—Where a garage keeper maintains a repair shop for motor vehicles, contracting to make repairs generally, rebuilding machines, or supplying new parts or attachments and appliances, he is liable for all defects in the work of repair, whether due to his own want of skill or to that of his workmen. He is bound to do the work contracted for reasonably well, that is, in a workmanlike manner, using such skill and judgment as the undertaking requires, and such as he claims his workmen to possess; making the repairs within the time stipulated without waste or damage to the employer; using the material furnished in a proper manner; and withal exercising good faith in the performance of the work.

Section 1193.—LIEN FOR STORAGE AND REPAIRS.

—A garage keeper has a special lien for storage or repair of an automobile, dependent on possession, for the compensation, for any balance which is due to him from the owner for such repairs or storage. If a car is brought into his garage by an agent of the owner, with authority to order repairs, the lien of the garage keeper will also attach to the car. The lien will be for the storage charges, and for reasonable charges for the work done and materials furnished. The statute provides in plain terms, that "keepers of garages for automobiles shall have a lien dependent on possession, for their compensation in caring for and safe keeping of such automobiles." The same statute also provides a lien in favor of any person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property.

Act of the Legislature, approved April 12, 1911.

Section 1194.—POSSESSION ESSENTIAL TO VALIDITY OF LIEN.—To complete the right of lien, it is essential that the possession and right of possession of the automobile should be continued and uninterrupted. A relinquishment of the possession to the owner is an abandonment of the lien, and operates as an immediate release of it. A lien may perhaps be renewed by the return and restitution of the car; but in such cases it would be subordinate to any intervening encumbrance to which the car in the meantime had become subject.

Section 1195.—SALE OF CAR TO SATISFY LIEN.—If the garage keeper is not paid the amount due him for storage or repairs, within twenty days after his bill becomes due, then he may proceed to sell the automobile, at public auction. He must give at least ten days previous notice of such sale, by advertising in some newspaper published in the county in which such property is situated, or if there be no newspaper published in such county, then by posting notices of the sale in three of the most public places in the town or place where

such automobile is to be sold, for ten days previous to the date of the sale. The proceeds of the sale must be applied to the discharge of his lien and the cost of keeping and selling the property; and the remainder, if any, must be paid over to the owner of the car.

Civil Code, Section 3052.

Section 1196.—FORM OF NOTICE OF SALE.—The following is a form of notice of sale by a garage keeper, to be published in a newspaper as directed in the preceding section, or to be posted in three public places if there is no newspaper published in the place where the sale is to be had:

NOTICE OF SALE OF AUTOMOBILE AT PUBLIC AUCTION.—Notice is hereby given that on the.....day of....., 191.., at 10 o'clock A. M., at the garage of James & Smith, No. 700 Van Ness Avenue, in the City and County of San Francisco, State of California, there will be offered for sale and sold at public auction to the highest bidder for cash, payable at the time of the sale, one automobile, which said automobile is particularly described as follows, to-wit:

(Here insert full description of the automobile to be sold.)

.....
and that said sale is to be had as aforesaid to satisfy the lien of said James & Smith for the sum of \$....., and costs and expenses of sale, upon said automobile for its storage and repairs thereon.

Dated....., 191...

JAMES & SMITH.

Section 1197.—MUNICIPAL ORDINANCES.—The local authorities of incorporated cities and counties, cities and towns, may limit by ordinance, rule or regulation, the speed of automobiles on the public highways, such speed limitations not to be in any case less than one mile in six minutes. And any municipality adopting a speed ordinance must have placed conspicuously on each main highway where the rate of speed changes, signs of sufficient size to be easily readable

bearing the words "Slow down to.....miles" (the rate being inserted), and also an arrow pointing in the direction where the speed is to be reduced or changed. The ordinance must fix the penalties for violation thereof, similar to and no greater than those fixed by the local authorities for violation of speed limitations for any other vehicles than motor vehicles.

Local authorities may also make, enforce and maintain reasonable ordinances, rules or regulations, concerning the speed at which automobiles may be operated in any public park or parkways; but there must be signs at each entrance of a park and along a parkway, conspicuously indicating the rate of speed permitted or required.

General Law of California, pages 630, 631.

Section 1193.—FRANCHISES FOR AUTOMOBILE ROADS.—The Legislature or other body to whom is entrusted the government of any county, city and county, city or town, may grant franchises for the construction of roads for the use of automobiles, such roads to be either on the surface, elevated, or depressed, on, over, across, or under the streets and public highways. The franchise may be granted for a term not exceeding fifty years. In incorporated cities no franchise must be granted for an automobile road, unless the consent in writing of the owners of a majority of the frontage upon the road or street along which the automobile road is sought to be constructed is first had and obtained, and filed with the legislative or governing body of the municipality.

Civil Code, Section 524.

PART XIII.

TAXES AND TAX TITLES.

Section 1199.—TAX LAWS STRICTLY CONSTRUED.—The imposition of a tax on property by the governing power is a thing which is purely statutory. The tax and the manner of imposing it, and the method of collecting it, are created and regulated solely by the Legislature. Therefore, it is said that tax laws are to be strictly construed. In other words, in order for a tax or tax title to be valid, every step specified by the statute to be taken must have been taken by the proper authorities. If anything is lacking, if any required act has been omitted, a tax title under the law of California will not be good. In succeeding Sections will be found the law of California on the subject of taxes and tax titles.

Section 1200.—PROPERTY SUBJECT TO TAXATION.—All property in this state, not exempt under the laws of the United States, excepting fruit and nut-bearing trees under the age of four years from the time of planting in orchard form, and grape-vines under the age of three years from the time of planting in vineyard form, growing crops, property used exclusively for public schools, free public libraries, and free museums, and such as may belong to the United States, this state, or to any county or municipal corporation within this state, is subject to taxation, as in this code provided; but nothing in this code shall be construed to require or permit double taxation.

Political Code, Section 3607.

Section 1201.—SHARES OF STOCK IN CORPORATIONS.—Shares of stock in corporations possess no intrinsic value over and above the actual value of the property

of the corporation which they stand for and represent; and the assessment and taxation of such shares, and also all the corporate property, would be double taxation. Therefore, all property belonging to corporations, save and except the property of national banking associations not assessable by Federal statute, shall be assessed and taxed. But no assessment shall be made of shares of stock in any corporation, save and except in national banking associations, whose property, other than real estate, is exempt from assessment by Federal statute.

Political Code, Section 3608.

Section 1202.—SHARES OF NATIONAL BANKS.—

The stockholders in every national banking association doing business in this state, and having its principal place of business located in this state, shall be assessed and taxed on the value of their shares of stock therein; and said shares shall be valued and assessed as is other property for taxation, and shall be included in the valuation of the personal property of such stockholders in the assessment of the taxes at the place, city, town, and county where such national banking association is located, and not elsewhere, whether the said stockholders reside in said place, city, town, or county, or not; but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits. In making such assessment to each stockholder, there shall be deducted from the value of his shares of stock such sum as is in the same proportion to such value as the total value of its real estate, and property exempt by law from taxation bears to the whole value of all the shares of capital stock in said national bank. And nothing herein shall be construed to exempt the real estate of such national bank from taxation. And the assessment and taxation of such shares of stock in said national banking association shall not be at a greater rate than is made or assessed upon other moneyed capital in the hands of individual citizens of this state.

The assessor charged by law with the assessment of said shares shall, within ten days after he has made such assessment, give written notice to each national banking association of such assessment of the shares of its respective shareholders; and no personal or other notice to such shareholders of such assessment shall be necessary for the purpose of this act. And in case the tax on any such stock is unsecured by real estate owned by the holder of such stock, then the bank in which said stock is held shall become liable therefor; and the assessor shall collect the same from said bank, which may then charge the amount of the tax so collected to the account of the stockholder owning such stock, and shall have a lien, prior to all other liens, on his said stock, and the dividends and earnings thereof, for the reimbursement to it of such taxes so paid.

Political Code, Sections 3609, 3610.

Section 1203.—EXEMPTION OF CHURCH PROPERTY.—All buildings, and so much of the real property on which they are situated as may be required for the convenient use and occupation of said buildings, when the same are used solely and exclusively for religious worship, shall be free from taxation; provided, that no building so used which may be rented for religious purposes and rent received by the owner therefor shall be exempt from taxation. That any person claiming property to be exempt from taxation under this section shall make a return thereof to the assessor annually, the same as property is listed for taxation, and shall accompany the same by an affidavit showing that the building is used solely and exclusively for religious worship, and that the described portion of the real property claimed as exempt is required for the convenient use and occupation of such building, and that the same is not rented for religious purposes and rent received by the owner therefor.

Political Code, Section 3611.

Section 1204.—CEMETERY LANDS EXEMPT FROM TAXATION.—The cemetery lands and property of any association, formed pursuant to law, are exempt from

all public taxes, rates, and assessments, and are not liable to be sold on execution, or be applied in payment of debts due from any individual proprietors. But the proprietors of lots, or plots, in such cemeteries, their heirs, or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purposes of a cemetery.

Act of the Legislature, approved April 24, 1911.

Section 1205.—FUNDS OF FRATERNAL BENEFIT SOCIETY EXEMPT.—All the funds of a fraternal benefit society, organized and licensed under the law of this state as a charitable and benevolent institution, are exempt from all state, county, district, municipal and school taxes. But the real estate and office equipment of such societies may be taxed.

Act of the Legislature, approved May 1, 1911.

Section 1206.—FEDERAL SECURITIES NOT TAXABLE BY THE STATE.—Bonds or other obligations of the United States, issued under its constitutional power to borrow money for its own purposes, are not subject to taxation by the state or municipal governments.

Section 1207.—PUBLIC PROPERTY NOT SUBJECT TO TAXATION.—Public property is not subject to taxation. If it is the property of the state, it is not taxed by the state itself, because it would be unreasonable to impose a tax, the payment of which would have to be met by the levy of another tax. For a similar reason, the property of a city, town or county, belonging to a municipal corporation, when used for public purposes, is not a proper subject of taxation. Consideration of public policy are deemed sufficient to exempt all such property from taxation.

Section 1208.—ASSESSMENT OF PROPERTY.—All taxable property must be assessed at its full cash value. Land and improvements thereon shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value. A

mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby, except as to railroad and other quasi-public corporations. In case of debt so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situated. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured. If the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and, to the extent of such payment, a full discharge thereof. If any such security or indebtedness shall be paid by any such debtor or debtors after assessment, and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year. The parties to any contract of loan or to any mortgage, deed of trust or other lien securing any obligation, shall nevertheless have the right to provide by contract that the debtor shall pay all or any taxes or assessments on the money loaned or on the mortgage, deed of trust, or other lien, or on the property thereby covered or the obligation thereby secured, and such contract shall be valid and constitute a waiver by the debtor of all right to treat the payment of such tax or assessment as a payment on the amount loaned or secured or as being to any extent a discharge thereof.

Penal Code, Section 3627.

**Section 1208a.—FRANCHISES AND OTHER TAX-
ABLE PROPERTY.**—The franchise, roadway, road-bed,
rails, and rolling-stock of all railroads operated in more than

one county in this state shall be assessed by the state board of equalization. Other franchises, if granted by the authorities of a county, city, or city and county, must be assessed in the county, city, or city and county within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business. All other taxable property shall be assessed in the county, city, or city and county, town, township, or district in which it is situated. Land shall be assessed in parcels or subdivisions, not exceeding six hundred and forty acres each; and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, shall be assessed by sections or fractions of sections. Lands sold by the state for which no patent has been issued, shall be assessed the same as other lands, but the owner shall be entitled to a deduction from such assessed valuation in the amount due the state as principal upon the purchase price. The assessor must, between the first Mondays in March and July of each year, ascertain the names of all taxable inhabitants, and all the property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was, at twelve o'clock meridian, of the first Monday in March next preceding; but no mistake in the name of the owner or supposed owner of real property shall render the assessment thereof invalid. In assessing solvent credits not secured by mortgage or trust deed, a reduction therefrom shall be made of debts due to bona fide residents of this state.

Political Code, Section 3628.

Section 1209.—STATEMENT OF OWNER.—The assessor must exact from each person a written statement, under oath, setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control, at twelve o'clock meridian on the first

Monday in March. The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. Every assessor shall have power to require any person found within such assessor's respective county to make and subscribe an affidavit, giving his name, place of residence or place of business, and whether he is the owner of any taxable property; and he may subpoena and examine any person in relation to any statement furnished him, or which discloses property which is assessable in his respective county that may be stored with, in possession of, or controlled by such person. And he may exercise this power in any county where the persons whom he desires to examine may be found, but shall have no power to require such person to appear before him in any other county than that in which the subpoena is served upon them.

Political Code, Sections 3629, 3631, 3632.

Section 1210.—ARBITRARY ASSESSMENTS.—If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment-book, opposite the name of such person, and must make an estimate of the value of such property of such person, and the assessor must transmit on or before the first day of July of each year to the board of supervisors a verified report in writing, separate from the assessment-roll, containing a complete list of all persons who refuse or neglect to furnish a statement of their property as herein provided for, or to comply with the requirements of this title, the amount of the assessment upon the property of such persons, with a statement of the particular facts, if any, upon which the assessment has been made, and the valuation of the property so assessed ascertained. The board of supervisors must investigate and inquire into all assessments and values so fixed by the assessor, as prescribed by this section, and for that purpose must require each taxpayer affected by such assessment

and valuation to make a statement under oath, within ten days from making an order requiring such statement, setting forth specifically, all the property owned or controlled, or in the possession of such taxpayer on the first Monday of March. If any taxpayer, after demand made by the board of supervisors, shall neglect or refuse to make and deliver to the said board of supervisors the statement, duly verified, herein provided for, or to comply with the other requirements of this title, the said board of supervisors, sitting as a county board of equalization, must increase such assessment and valuation to such an amount as the said board shall deem just; but the value fixed by the assessor must not, in any case, be reduced by the board of supervisors.

Political Code, Section 3633.

Section 1211.—ASSESSMENT OF UNKNOWN OR ABSENT OWNERS.—If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property. If the name of the absent owner is known to the assessor, or if it appears of record in the office of the county recorder where the property is situated, the property must be assessed to such name; if unknown to the assessor, and if it does not so appear of record, the property must be assessed to unknown owners.

Political Code, Sections 3635, 3636.

Section 1212.—CONSIGNED PROPERTY.—All personal property consigned for sale to any person within this state, from any place out of this state, or from other county or counties in this state, must be assessed in the county where the property is situated.

Political Code, Section 3638.

Section 1213.—PROPERTY OF FIRM OR CORPORATION.—The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

Political Code, Section 3641.

Section 1214.—UNDISTRIBUTED PROPERTY OF DECEASED PERSON.—The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators; and a payment of taxes made by either binds all the parties in interest for their equal proportions.

Political Code, Section 3642.

Section 1215.—FERRIES AND TOLL BRIDGES.—A ferry-boat is a vessel traversing across any of the waters of the state, between two constant points, regularly employed for the transfer of passengers and freight, authorized by law so to do, and also any boat employed as a part of the system of a railroad for the transfer of passengers and freight, plying at regular and stated periods between two points. Where ferries connect more than one county, the wharves, storehouses, and all stationary property belonging to or connected with such ferries, must be assessed, and the taxes paid, in the county where located. The value of the franchise, and water-craft, and of all toll-bridges connecting more than one county, must be assessed in equal proportions in the counties connected by such ferries or toll-bridges.

Political Code, Section 3643.

Section 1216.—VESSELS AND BOATS.—Vessels registered, licensed, or enrolled out of and plying in whole or in part in the waters of this state, the owners of which reside in this state, must be assessed in this state.

All vessels, except ferry-boats, which may be registered, of every class which are by law required to be registered, must be assessed and the taxes thereon paid, only in the county, or city and county, where the same are registered, enrolled, or licensed.

All boats and small craft not required to be registered, must be assessed in the county where their owner resides.

Political Code, Sections 3644, 3645, 3646.

Section 1217.—PROPERTY AND MONEY IN LITIGATION.—Money and property in litigation in possession of a county treasurer, of a court, county clerk, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes be paid thereon under the direction of the court.

Political Code, Section 3647.

Section 1218.—PROPERTY CONCEALED, MISREPRESENTED, ETC.—Any property wilfully concealed, removed, transferred, or misrepresented by the owner or agent thereof, to evade taxation, upon discovery must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of supervisors.

Political Code, Section 3648.

Section 1219.—PROPERTY NOT TAXED IN PREVIOUS YEAR.—Any property discovered by the assessor to have escaped assessment for the last preceding year, if such property is in the ownership or under the control of the same person who owned or controlled it for such preceding year, may be assessed at double its value.

Political Code, Section 3649.

Section 1220.—NOTICE OF MEETING TO EQUALIZE ASSESSMENTS.—As soon as completed, the assessment-book, together with the map-books, statements, and military roll, must be delivered to the clerk of the board of supervisors, who must immediately give notice thereof, and of the time the board will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct. In the mean time, the assessment-book, map-books, and statements must remain in his office for the inspection of all persons interested. After the board of equalization has completed its labors, the map-books and statements shall be returned to the county assessor's office, and shall be kept in said office for future reference.

Political Code, Section 3651.

Section 1221.—PERSONS CLAIMING OWNER-SHIP.—Lands once described on the assessment-book need not be described a second time, but any person claiming the same, and desiring to be assessed therefor, may have his name inserted with that of the person to whom such land has been assessed.

Political Code, Section 3657.

Section 1222.—OFFICIAL MAPS OF CITY LOTS OR BLOCKS.—Whenever any city, town, or subdivision of land is platted or divided into lots or blocks, and whenever any addition to any city, town, or such subdivision shall be or has been laid out into lots or blocks for the purpose of sale or transfer, it shall be lawful for the city engineer, or the county or city and county surveyor, under the direction and with the approval of the city council or board of supervisors of said city, county, or city and county, to make an official map of such city, town, or subdivision, giving to each block on such map a number, and to each lot or subdivision in such block a separate number or letter, and giving names to such streets, avenues, lanes, courts, commons, or parks, as may be delineated on such official map.

Whenever the city council or board of supervisors of such city, county, or city and county, shall adopt such map as the official map of the subdivision, town, city, county, or city and county, it shall be lawful to, and the assessor shall, describe such lots, blocks, or parcels of land by numbers or letters as delineated on such map in assessing such property, and it shall be lawful and sufficient to describe such lots or blocks in any deeds, conveyances, contracts, or obligations affecting any such lots or blocks as designated on such official map, a reference to such map sufficient for the identification thereof being coupled with such description.

Such engineer or surveyor, under the direction and with the approval of the city council or board of supervisors of such city, county, or city and county, may compile such map from maps on file, or may resurvey or renumber the blocks, or renumber or reletter the lots in such blocks, or

change the names of streets. All surveys and the field-notes thereof made by any such engineer or surveyor, under the provisions of this section, or in surveying officially any lots or parcels of land in any city, town, county, or city and county, for the purposes of any such map, shall be filed in the office of the surveyor or engineer, as the case may be, and shall become a part of the public records of such city, town, county, or city and county.

Each and every map, made and adopted as hereinabove provided, shall be certified under the hands of a majority of the members and the presiding officer and secretary and official seal, if any, of the authority adopting the same. Such certificate shall set forth in full the resolution adopting such map, with the date of adoption; and such map, so certified, shall be forthwith filed in the office of the county recorder of the county, or city and county, wherein the platted lands are situate, and the said recorder shall immediately securely fasten and bind, in one of a series of firmly bound books to be provided, together with the proper indexes thereof and appropriately marked for the reception of the maps herein provided for, each such map so filed with him; and the same shall become an official map for all the purposes of this section when so certified, filed and bound, but not before. This section is hereby made applicable to all cities, towns, and villages in this state, as well as to the counties, and cities and counties thereof, whether the same be incorporated or not; and the words "city council or board of supervisors" wherever used herein shall be deemed to include the proper corresponding governing board and authority in each such place; and the words "city engineer" and "county or city and county surveyor" shall be deemed to include the like or corresponding officer, subject to the direction of such "corresponding governing board and authority" in each such place; or, if there be no such officer subject to such direction, such "corresponding board and authority" may employ competent engineers and surveyors to the extent necessary for the carrying out of the purposes of this act in the places subject to its jurisdiction, and the persons so appointed shall have the

same authority and shall perform the same duties as are given to and enjoined upon "city engineers" and "county or city and county surveyors," respectively, in like cases. The services of such engineers and surveyors so employed shall be contracted for, examined, passed upon, audited, and paid as are other debts contracted by such governing boards and authorities.

Political Code, Section 3658-A.

Section 1223.—ASSESSMENT OF WATER-DITCHES, TOLL-ROADS, AND TELEGRAPH AND TELEPHONE LINES.—Water-ditches constructed for mining, manufacturing, or irrigating purposes, and wagon and turn-pike toll-roads, must be assessed the same as real estate by the assessor of the county, at a rate per mile for that portion of such property as lies within his county. All telegraph and telephone lines shall be described in the same manner as real estate is described, but assessed as personal property by the assessor of the county, at a rate per mile for that portion of such property as lies within his county.

Political Code, Section 3663.

Section 1224.—ASSESSMENT OF RAILWAY FRANCHISES AND PROPERTIES.—The state board of equalization must meet at the State Capitol on the third Monday in July, and continue in open session from day to day, Sundays excepted, until the first Monday in August. At such meetings the board must assess the franchise, roadway, road-bed, rails, and rolling-stock of all railroads operated in more than one county, but franchises derived from the United States shall not be assessed. Assessments must be made to the corporation, persons, or association of persons owning the same. If any portion of any railroad less than the whole is operated by some corporation or association of individuals other than the owner of such railroad, under lease or other contract, and such portion so operated runs in more than one county, the value of such part or portion of such railroad shall be assessed separate and apart from the

balance of said railroad, and the board shall assess the roadway, road-bed, and rails of such portion of said railroad, together with the rolling-stock used thereon by the corporation or association of individuals operating the same. The depots, stations, shops, and buildings erected upon the space covered by the right of way, and all other property owned by such person, corporation, or association of persons, are assessed by the assessor of the county wherein they are situate. Within twenty days after the first Monday of August, the board must apportion the total assessment of the franchise, roadway, road-bed, rails, and rolling-stock of each railway to the counties, or cities and counties, in which such railway is located, in proportion to the number of miles of railway laid in such counties, and cities and counties. The board must also, within said time, transmit, by mail, to the county auditor of each county, or city and county, to which such apportionment shall have been made, a statement showing the length of the main track of such railway within the county, or city and county, with a description of the said track within the county, or city and county, including the right of way, by metes and bounds, or other description sufficient for identification (but it shall not be necessary to state the variable width of such right of way), the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, road-bed, rails, and rolling-stock of such railway within the state, and the amount apportioned to the county, or city and county. The auditor must enter the statement on the assessment roll or book of the county, or city and county, and where the county is divided into assessorial townships or districts, then on the roll or book of any township or district he may select, and enter the amount of the assessment apportioned to the county, or city and county, in the column of the assessment book or roll, as aforesaid, which shows the total value of all property for taxation, either of the county, city and county, or such township or district. On the third Monday in September, the board of supervisors must make, and cause to be entered in the proper record-book, an order

stating and declaring the length of main track of the railway assessed by the state board of equalization within the county, the assessed value per mile of such railway, the number of miles of track, and the assessed value of such railway lying in each city, town, township, school and road district, or lesser taxation district in the county, or city and county, through which such railway runs, as fixed by the state board of equalization, which shall constitute the assessment value of said property for taxable purposes in such city, town, township, school, road, or other district; and the clerk of the board of supervisors must transmit a copy of each order or equalization to the city council, or trustees, or other legislative body of incorporated cities or towns, the trustees of each school district, and the authorized authorities of other taxation districts through which such railway runs. All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes, as the property of individuals within such city, town, township, school, road, and lesser taxation districts, respectively. If the owner of a railway assessed by the state board of equalization is dissatisfied with the assessment made by the board, such owner may, at the meeting of the board, between the first Monday in August and the first Monday in September, apply to the board to have the same corrected in any particular, and the board may correct and increase or lower the assessment made by it so as to equalize the same with the assessment of other property in the state. If the board shall increase or lower any assessment previously made by it, it must make a statement to the county auditor of the county affected by the change in the assessment of the change made, and the auditor must note such change upon the assessment book or roll of the county, as directed by the board.

Political Code, Section 3665.

Section 1225.—COUNTY BOARD OF EQUALIZATION.—The board of supervisors of each county must meet on the first Monday of July in each year, to examine

the assessment-book and equalize the assessment of property in the county. It must continue in session for that purpose, from time to time, until the business of equalization is disposed of, but not later than the third Monday in July.

The board has power, after giving notice in such manner as it may, by rule, prescribe, to increase or lower the entire assessment-roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said roll, and make the assessment conform to the true value of such property in money.

No reduction must be made in the valuation of property, unless the party affected thereby or his agent makes and files with the board a written application therefor, verified by his oath showing the facts upon which it is claimed such reduction should be made.

Before the board grants the application or makes any reduction applied for, it must first examine, on oath, the person or the agent making the application touching the value of the property of such person. No reduction must be made unless such person or the agent making the application attends and answers all questions pertinent to the inquiry.

Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

During the session of the board the assessor and any deputy whose testimony is needed must be present, and may make any statement, or introduce and examine witnesses on questions before the board.

Any assessment on a mortgage, or deed of trust, which has been erroneously taxed to the mortgagee, or party loaning the money, when the same has been paid or satisfied prior to the first Monday in March, shall be valid only as against the real estate from the assessment on which a reduction has been previously made. When partial payments have been made on a debt secured by mortgage, or deed of trust, the owner is authorized to make the proper deduction, listing only the balance due on the first Monday in March.

Political Code, Sections 3674, 3675, 3676, 3677, 3678.

Section 1226.—FIXING RATE OF TAXES.—Between the first and second Mondays in September of each year, the State Board of Equalization must determine the rate of state tax to be levied and collected upon the assessed valuation of the property of the state, which, after allowing five per cent for delinquencies in collection of taxes, must be sufficient to raise the specific amount of revenue directed to be raised by the legislature for state purposes.

The board of supervisors of each county must, on the third Monday in September, fix the rate of county taxes, designating the number of cents on each one hundred dollars of property levied for each fund, and must levy the state and county taxes upon the taxable property of the county; provided, that it shall not be lawful for any board of supervisors of any county in the state to levy, nor shall any tax greater than fifty cents on each one hundred dollars of property be levied and collected in any one year, to pay the bonded indebtedness, or judgment arising therefrom, of this state, or of any county or municipality in this state.

Political Code, Sections 3696, 3714.

Section 1227.—LIEN OF TAXES.—Every tax has the effect of a judgment against the person, and every such lien has the force and effect of an execution duly levied against all property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

Every tax due upon personal property is a lien upon the real property of the owner thereof, from and after twelve o'clock M. of the first Monday in March in each year.

Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate, is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

Political Code, Sections 3716, 3717, 3718.

Section 1228.—TAX-COLLECTOR TO PUBLISH NOTICE.—Within ten days after the receipt of the assessment-book, from the auditor, the tax-collector must publish a notice specifying:

1. That the taxes on all personal property secured by real property, and one half of the taxes on all real property, will be due and payable on the second Monday in October, and will be delinquent on the last Monday in November next thereafter, at six o'clock p. m., and that unless paid prior thereto, fifteen per cent will be added to the amount thereof, and that if said one half be not paid before the last Monday in April next, at six o'clock p. m., an additional five per cent will be added thereto, that the remaining one-half of the taxes on all real property will be payable on and after the first Monday in January next, and will be delinquent on the last Monday in April next thereafter, at six o'clock p. m., and that unless paid prior thereto, five per cent will be added to the amount thereof.

2. That all taxes may be paid at the time the first installment, as herein provided, is due and payable.

3. The times and places at which payment of taxes may be made.

Political Code, Section 3746.

Section 1229.—TAXES ON ANY PARTICULAR PARCEL OF LAND MAY BE PAID SEPARATELY.—The taxes on any particular lot, piece, or parcel of land contained in any assessment may be paid separately from the whole assessment, if such lot, piece, or parcel has a separate valuation on the assessment-roll, by paying the amount of state and county taxes due on such lot, piece, or parcel of land, with a proper proportion of the amounts due as tax on personal property, penalties, if any, and a proper proportion of the tax due to any school, road, or other lesser taxation district. The tax-collector shall make an entry on the margin of the assessment-book, showing what property has been

released by the payment of the taxes, together with the amounts of such taxes separately and specifically set forth.

Political Code, Section 3747.

Section 1230.—TIME AND PLACE OF PAYMENT.

—All taxes must be paid at the office of the tax-collector, unless the board of supervisors by order, made on or before the first Monday in October, direct that the taxes must be collected in the several townships of the county, or in either thereof, or in any municipal corporation in said county; in which case, the notice by the tax-collector must specify a time and place within any township or municipal corporation named in such order, when and where the tax-collector will attend to receive the payment of taxes.

The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places in each township.

Political Code, Sections 3748, 3749.

Section 1231.—PAYMENT OF TAXES OF DECEDENTS AND INSOLVENTS.

—The superior court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees, must be made until all taxes against the estate are paid. In the same manner, the court must require the assignee to pay out of the funds of an insolvent's estate all taxes due from such estate; and no final discharge to such assignee shall be granted until all taxes against the insolvent's estate are paid.

Political Code, Section 3752.

Section 1232.—WHEN TAXES ARE DELINQUENT; PENALTIES.

—On the last Monday in November of each year, at six o'clock p. m., all taxes then unpaid, except the last installment of the real property taxes, are delinquent, and thereafter the tax-collector must collect, for the use of

the county, or city and county, an addition of fifteen per cent thereon; provided, that if they be not paid before the last Monday in April next succeeding, at six o'clock p. m., he shall collect an addition of five per cent thereon. On the last Monday in April of each year, at six o'clock p. m., all the unpaid portion of the remaining one-half of the taxes on all real property are delinquent, and thereafter the tax-collector must collect, for the use of the county, or city and county, an addition of five per cent thereon; provided, that the entire tax on any real property may be paid at the time the first installment, as above provided, is due and payable; and provided further, that the taxes on all personal property unsecured by real property shall be due and payable immediately after the assessment of said personal property is made.

Political Code, Section 3756.

Section 1233.—PUBLICATION OF DELINQUENT LIST.—On or before the fifth day in June of each year, the tax-collector must publish the delinquent-list, which must contain the names of the persons and a description of the property delinquent, and the amount of taxes, penalties, and costs due, opposite each name and description, with the taxes due on personal property, the delinquent state, poll, road, and hospital tax, the taxes due each school, road, or other lesser taxation district, added to the taxes on real estate, where the real estate is liable therefor, or the several taxes are due from the same person.

Political Code, Section 3764.

Section 1234.—NOTICE OF SALE.—The tax-collector must append and publish with the delinquent-list a notice that unless the taxes delinquent, together with the costs and penalties, are paid, the real property upon which such taxes are a lien will be sold.

The publication must be made once a week for three successive weeks in some newspaper, or supplement thereto, published in the county.

The publication must designate the day and hour when the property will, by operation of law, be sold to the state, which sale must not be less than twenty-one nor more than twenty-eight days from the time of the first publication, and the place shall be in the tax-collector's office.

Political Code, Sections 3765, 3766, 3767.

Section 1235.—LAND SOLD FOR TAXES ENCUMBERED BY TRUST DEED OR MORTGAGE.—Whenever land to be sold for taxes is encumbered by trust deed or mortgage, and the taxes for which the land is to be sold is for the value over and above the encumbrance, as the said encumbrance is shown by and upon the assessment-roll in the tax-collector's office, the tax-collector shall at least ten days before the date of sale mail a copy of the notice of sale to the mortgagee named in any such mortgage and the trustees named in any such trust deed. When the addresses of the mortgagee named in any mortgage and the trustees named in any trust deed are unknown to the tax-collector, he shall mail said notice in said names to the county seat of the said county. The tax-collector shall file a copy of said notice with an affidavit of time and place of mailing same with the county recorder and county clerk respectively.

Political Code, Section 3760-A.

Section 1236.—ADDITIONAL SUM COLLECTED TO DEFRAY COSTS.—The tax-collector must collect, in addition to the taxes due on the delinquent-list, together with the penalties for delinquency, fifty cents on each lot, piece, or tract of land separately assessed, and on each assessment of personal property, which shall be paid to the county and be placed to the credit of the salary fund.

Political Code, Section 3770.

Section 1237.—PROPERTY SOLD TO STATE.—On the day and hour fixed for the sale, all the property delinquent, upon which the taxes of all kinds, penalties, and costs have not been paid, shall, by operation of law and the

declaration of the tax-collector, be sold to the state, and said tax-collector shall make an entry, "Sold to the state," on the delinquent-assessment list, opposite the tax, provided, that on the day of sale the owner or person in possession of any property offered for sale for taxes due thereon, may pay the taxes, penalties, and costs due; and provided further, that when the original tax amounts to the sum of three hundred dollars or more upon any piece of property or assessment delinquent, the state may bring suit against the owner of said property for the collection of said tax or taxes, penalties, and costs.

Political Code, Section 3771.

Section 1238.—RECORD OF SALE KEPT BY COLLECTOR.—The tax-collector must enter in appropriate columns in the delinquent-list opposite the description of each parcel of land sold, the date of sale, and the total amount for such parcel of land so sold. In case of a subsequent redemption the auditor must make a note of such redemption and the date thereof on the margin of the delinquent-list opposite the description of the land sold.

Act of the Legislature, approved May 1, 1911.

Section 1239.—TIME FOR REDEMPTION OF PROPERTY.—The redemption of the property sold may be made by the owner, or any party in interest, within 5 years from the date of the sale to the state, or at any time prior to the entry of said land by the state.

Political Code, Section 3780.

Section 1240.—HOW REDEMPTION IS MADE.—Redemption must be made to the county treasurer on an estimate furnished by the auditor, in lawful money of the United States.

Political Code, Section 3781.

Section 1241.—TAX DEEDS MADE AFTER FIVE YEARS.—If the property is not redeemed within five years from the date of the sale to the state, the tax collector, or

his successor in office, must make the state a deed of the property. All such deeds shall be recorded in the office of the county recorder of the county wherein the property sold is situated.

Act of the Legislature approved April 28, 1911.

Section 1242.—EVIDENCE OF TAX DEEDS.—The tax deed, duly acknowledged or approved, is primary evidence that the property was assessed as required by law; that the property was equalized as required by law; that the taxes were levied in accordance with the law; that the taxes were not paid; that at a proper time and place the property was sold as prescribed by law, and by the proper officer; that the property was not redeemed; that the person who executed the deed was the proper officer, and the tax deed is conclusive evidence of the regularity of all other proceedings, from the assessment by the assessor, inclusive, to the execution of the deed. There is an exception to this rule in the case of actual fraud, and if a levy of an assessment, or the assessment itself, or any other requisite proceeding leading up to the execution of the deed, was procured or done by fraudulent acts, then the deed would not be protected by the law, and would not be conclusive of the facts recited in it.

Act of the Legislature approved April 25, 1911.

Political Code, Section 3787.

Section 1243.—STATE LANDS SOLD FOR DELINQUENT TAXES.—When state lands, upon which the full purchase price has not been paid, have been sold to the state for delinquent taxes, and the deed therefor to the state has been forwarded to and filed with the surveyor general, the said lands shall again become subject to entry and sale, in the same manner, and subject to the same conditions, as apply to other state lands of like character; except that the former possessors or owners of the land thus deeded to the state, their heirs or assigns, shall be preferred purchasers thereof for the period of six months after the deeds are

filed with the surveyor general; during which said period of six months no application by any person other than said former possessors, or owners, their heirs or assigns, shall be filed; and provided further, that the former possessors or owners of said land thus deeded to the state, their heirs or assigns, shall have the right to be restored to their former estate and title (at any time either during the said period of six months above referred to, or afterwards, and before application for said land is made and filed with the surveyor general by any other person) upon paying to the county treasurer of the county wherein the said land is situated a sum equivalent to the taxes, penalties, costs and accruing costs by virtue whereof the state became a purchaser of the said lands, and also, all delinquent taxes, penalties, and costs which may have accrued upon such lands subsequent to the date of the certificate of purchase under which the former possessors or owners, or their heirs and assigns, claim title to said lands, and also all unpaid interest up to the first day of January. If such former owner or possessor, his heirs or assigns desires to avail himself of the privileges hereof, he shall file with the surveyor general the receipt of the county treasurer, showing the payment of all such taxes, together with all unpaid interest up to the first day of January following the date when he shall make the said payment to the said county treasurer, and thereupon the surveyor general shall give to such person a certificate signed and sealed by him, but which need not be acknowledged, showing full payment of all such sums, which said receipt of the surveyor general shall be recorded by said persons in the county recorder's office of the county wherein the said lands are situated; and the said receipt, when so recorded, shall have the same effect as a deed of reconveyance of the interest conveyed by such deed, and the said former owner or possessor, his heirs or assigns, shall thereby be restored to all his rights in the said lands, and his certificate of purchase shall be in full force and effect as effectually as though no sale had been made; but the surveyor general shall not receive or file any application or make a sale of any lands

thus deeded to the state, except upon the previous payment into the state treasury, as other moneys are required to be paid therein, in addition to the price of said lands as compared with the price fixed for other state lands of like character, by the person or persons proposing to file the application and make the purchase, of a sum equal to the delinquent taxes, penalties, costs and accruing costs, by virtue whereof the state became a purchaser of the lands thus sought to be entered or purchased, and also all delinquent taxes, penalties and costs which may have accrued upon such lands prior to and subsequent to the date of the sale to the state in pursuance of which the state received a deed therefor; and the surveyor general's authority for filing said application, if said lands are otherwise subject to sale, shall be the production by said applicant of the county treasurer's receipts showing full payment of the delinquent taxes, penalties and costs as herein specified.

If an application for the land is not presented to the surveyor general's office by the party, or his agent, who paid the delinquent taxes, penalties and costs, by virtue whereof the state became a purchaser of said land, within a period of fifteen days after the payment thereof, the land shall be subject to sale to the first person presenting his application for said land to the surveyor general's office, accompanied by a certified copy of the auditor's estimate and treasurer's receipt, showing full payment of all delinquent taxes, penalties and costs, as herein specified. An estimate of the amount of delinquent taxes, penalties and costs, as herein specified, must be made by the county auditor of the county wherein the land is situated, upon the written request of the surveyor general, and without cost to the state. Said county auditor's estimate shall include all delinquent taxes, penalties and costs, as shown by the records in the state land office, by virtue whereof the state became a purchaser of the land thus sought to be entered or purchased, and also all delinquent taxes, penalties and costs which may have accrued upon such lands prior to and subsequent to the date of the

sale to the state in pursuance of which the state received a deed therefor.

Nothing in this act contained shall apply to land situated within the exterior boundaries of an Indian or Forest reservation created by authority of the United States, or of a National Monument, or within the exterior boundaries of lands withdrawn from public entry for forest purposes.

Act of Legislature approved May 1, 1911.

Section 1244.—SEIZURE AND SALE OF PERSONAL PROPERTY FOR TAXES.—The tax collector of each county, and city and county, has the power, and it is made by law his duty, to collect the taxes due on personal property, except when real estate is liable therefor, by seizure and sale of any personal property owned by the delinquent. The sale must be at public auction, and of a sufficient amount of the property to pay taxes, percentage and cost. The sale must be made after one week's notice of the time and place thereof, given by publication in a newspaper in the county, or by posting in three public places.

Political Code, Sections 3790, 3791, 3792.

Section 1245.—TITLE OF PERSONAL PROPERTY SOLD FOR TAXES.—On payment of the price bid for any property sold, the delivery of the property with a bill of sale vests the title in the purchaser. There is no redemption from a sale of personal property.

Political Code, Section 3794.

Section 1246.—PERSONAL PROPERTY AT RISK OF OWNER.—The unsold portion of any personal property sold for taxes may be left at the place of sale, at the risk of the owner.

Political Code, Section 3796.

Section 1247.—ERRONEOUS ASSESSMENTS.—When property that is exempt from taxation has been erroneously assessed, or when improvements which did not

in fact exist when the tax became a lien, have been erroneously assessed on real estate, the board of supervisors may, upon satisfactory proof, with the written consent of the district attorney, and by an order entered upon the minutes, make an order to cancel such assessment, and if exempt property has been sold to the state for nonpayment of the tax on such property or improvements so erroneously assessed, and a certificate of sale or deed has been issued to the state and the state has not disposed of the property, the board must also direct the recorder to cancel the certificate of sale or deed so issued, so far as the same relates to such exempt property or non-existing improvements. In the city and county of San Francisco the written consent of the city attorney shall have the same effect as that of the district attorney.

Act of the Legislature, approved March 8, 1911.

Section 1248.—TAXES ERRONEOUSLY COLLECTED.—Any taxes, penalties or costs thereon paid more than once, or erroneously or illegally collected, or any taxes paid upon an assessment in excess of the actual cash value of the property so assessed by reason of a clerical error of the assessor as to the excess in such cases, or any taxes paid upon an erroneous assessment of improvements on real estate not in fact in existence when said taxes became a lien, may, by order of the board of supervisors, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer by the county treasurer and it shall afterwards appear to the satisfaction of the board of supervisors that a portion of the money so paid should be refunded as herein provided, said board of supervisors may refund such portion of the said taxes, penalties and costs so paid to the state treasurer, to the person entitled to the same, out of the general fund, and the auditor shall certify to the controller, in such form as the controller may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the controller, if satisfied of the legality of such refunding by the said board,

shall give such treasurer credit for the state's portion of the amounts so refunded. When the taxes, penalties and costs hereinbefore referred to are levied in behalf of any school district or any municipal or other public corporation, and collected by the officers of the county, the same may be refunded upon order of the board of supervisors, and the county treasurer shall pay the amount to be refunded out of any money in his possession belonging to the appropriate fund of such school district or municipal or other public corporation. No order for the refund of taxes, penalties or costs under this section shall be made except upon a verified claim therefor filed within three years after the making of the payment sought to be refunded.

Political Code, Section 3804.

Section 1249.—WHEN LAND ASSESSED MORE THAN ONCE.—When the tax collector discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts, by his certificate, to the auditor and board of supervisors; the board shall thereupon enter an order upon its minutes directing the auditor to cancel such double assessment by an entry on the margin of the assessment book, as also upon the delinquent list, should such double assessment be carried therein. If the property assessed under such double assessment has been sold to the state, and a certificate of sale or deed therefor has been issued to the state, the order of the board shall further direct the county recorder to cancel such erroneous certificate of sale and deed so issued, before the state has disposed of the property thereby conveyed; provided, no cancellation of a double assessment, certificate of sale or deed shall be made in any case until the taxes, penalties, costs and other charges by law against the property on one of such assessments shall have been paid. In case the tax collector issues an erroneous certificate of sale, or deed, to any property upon which the taxes have been fully paid for the year therein mentioned, such fact shall be certified to the board of

supervisors by the auditor and tax collector, and thereupon said board shall make and enter in its minutes an order authorizing the county recorder to cancel such erroneous certificate or deed.

Whenever a sale of property has been made for nonpayment of a poll tax unlawfully assessed, or which, if lawfully assessed, has been paid and payment has not been properly noted, the board of supervisors may, upon proof thereof, by an order entered upon its minutes, direct the county recorder to cancel the certificate of sale or deed issued to the state under such sale, so far as the same relates to said poll tax, at any time before the state has disposed of such property; provided, that where real property other than that belonging to a person liable for poll tax on the first Monday of March of the year in which such poll tax became due, has been erroneously sold for the poll tax of such person, the board of supervisors, upon satisfactory proof of ownership of the said property, may order the certificate of sale or deed canceled; provided further, however, that no such order shall be made if the person liable for said poll tax owned any interest whatever in said property on said first Monday in March, when said tax became due, or owned any interest therein at the time of the application for such cancellation.

Political Code, Section 3805.

Section 1250.—PUBLIC LANDS UPON WHICH FINAL PAYMENT HAS NOT BEEN MADE.—Whenever the possessory interest in land belonging to the United States, or land upon which final payment had not, at the time of assessment, been made to the United States, or land of this state upon which the full purchase price has not or had not been made to the state, has been, or may hereafter be, assessed and sold to the state for delinquent state, county or local district taxes, or whenever the taxes levied against any such possessory interest in lands, or against any such state lands, have not been paid, the board of supervisors shall, upon verified application of the owner of the land, by an order

entered upon its minutes, direct the auditor to cancel such assessment; and if the property under such assessment has been sold to the state, and a certificate of sale or deed thereon issued to the state, such order of the board shall further direct the recorder to cancel such certificate of sale and deed; provided, that no order to cancel any such assessments, certificates of sale or deeds shall be made where the person or persons to whom such land or possessory interests, or state lands, his or their successors or assigns, have, after such assessment, obtained from the United States or this state a patent or the absolute title to said lands, or retain any interest therein, or been in possession of the premises; and provided that no order to cancel any assessment shall be made whereby the person or persons, his or their successors or assigns shall be relieved from paying the taxes upon said property for the full time he or they have had the possession of said property, no matter in whose name said property was or had been assessed. Before an order to cancel such assessment, certificate of sale or deed shall be granted, the applicant shall file with the board a certificate of the Register of the United States Land Office, or of the state land office, showing that the person or persons to whom such assessment was made, his or their successors and assigns, never received a patent or otherwise acquired title to said lands. Upon affecting the cancellations, all assessments, certificates of sale and deeds the subject of such cancellation shall be null and void.

Political Code, Section 3805a.

Section 1251.—CLERICAL ERRORS IN CERTIFICATE OF SALE.—When real property has been correctly assessed and sold to the state for delinquent state and county taxes, any misstatement of facts or clerical errors occurring or appearing in the certificate of sale, or in the deed issued thereon, may be corrected by the tax collector, or his successor in office, upon an order of the board of supervisors, entered upon its minutes directing correction, by the issuance of a new or amended certificate of sale, or

tax deed, when it can be determined by the assessment and subsequent proceedings what was originally intended.

Political Code, Section 3805b.

Section 1252.—WHAT MISTAKES DO NOT AFFECT SALE OF PROPERTY FOR TAXES.—When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof, affects the sale, or renders it void or voidable.

Political Code, Section 3807.

Section 1253.—PROPERTY SOLD TO STATE ASSESSED SUBSEQUENTLY.—In case property assessed for taxes is purchased by the state, it shall be assessed each subsequent year for taxes until a deed is made to the state therefor, in the same manner as if it had not been so purchased.

Political Code, Section 3813.

Section 1254.—ALL COSTS MUST BE PAID BEFORE REDEMPTION.—In case property is sold to the state, and is subsequently assessed, no person shall be permitted to redeem such sale, except upon payment of the amount of such subsequent assessments, costs, fees, penalties, and interest.

Political Code, Section 3815.

Section 1255.—WHEN FORMER OWNERS MAY REDEEM.—In all cases where real estate has been sold, or may hereafter be sold for delinquent taxes to the state, and the state has not disposed of the same, the person whose estate has been, or may hereafter be sold, his heirs, executors, administrators, or other successors in interest, shall, at any time after the same has been sold to the state, and before the state shall have disposed of the same, have the right to redeem such real estate by paying to the county treasurer of the county wherein the real estate may be situated, the

amount of taxes, penalties and costs due thereon at the time of said sale, with interest on the aggregate amount of said taxes, at the rate of seven per cent per annum; and also all taxes that were a lien upon said real estate at the time said taxes became delinquent; and also all unpaid taxes of every description assessed against the property for each year since the sale; or, if not so assessed, then upon the value of the property as assessed in the year nearest the time of such redemption, with interest from the first day of July following each of said years, respectively, at the same rate, to the time of redemption; and also all costs and expenses of such redemption, and penalties as follows, to-wit: ten per cent if redeemed within six months from the date of sale; twenty per cent if redeemed within one year therefrom; thirty per cent if redeemed within two years therefrom; forty per cent if redeemed within three years therefrom; forty-five per cent if redeemed within four years therefrom; and fifty per cent, if redeemed within five or any greater number of years therefrom. The penalty shall be computed upon the amount of each year's taxes in like manner, reckoning from the time when the lands would have been sold for the taxes of that year, if there had been no previous sales thereof.

The county auditor shall, on the application of the person desiring to redeem, make an estimate of the amount to be paid, and shall give him triplicate certificates of the amount, specifying the several amounts thereof, which certificates shall be delivered to the county treasurer, together with the money, and the county treasurer shall give triplicate receipts, written or indorsed upon said certificates, to the redemptioner, who shall deliver one of said receipts to the state controller, and one to the county auditor, taking their receipts therefor.

Upon the payment of the money specified in said certificate, and the giving of the receipts aforesaid by the treasurer, controller, and auditor, any deed or certificate of sale that may have been made to the state shall become null and void, and all right, title and interest acquired by the state, under

and by virtue of the tax sale, shall cease and determine. Upon consummation of the redemption, the auditor shall report same to the recorder, whereupon the recorder shall, without payment of fee, note on the margin of the certificate of sale, or deed, if issued, the fact of such redemption, date thereof and by whom redeemed.

The receipt of the controller may be recorded in the recorder's office of the county in which said real estate is situated, in the book of deeds, and the record thereof shall have the same effect as that of a deed of reconveyance of the interest conveyed by such deed or certificate of sale.

This act shall apply to state lands sold by the state when the full amount of the purchase price has not been paid to the state therefor, except when the deed to the state has been filed with the surveyor-general, and an application has been filed therefor in that office.

Political Code, Section 3817.

Section 1256.—PARTIAL REDEMPTION.—A partial redemption may be made, separately from the whole assessment, of any lot, piece, or parcel of land contained in any assessment, if such lot, piece, or parcel has a separate valuation on the assessment roll, in the manner following: In the estimate provided for, the auditor shall estimate the amount of state and county taxes due on such lot, piece, or parcel of land, together with a proper proportion of the taxes due on personal property under such assessment, and of the taxes due each school, road, or lesser taxation district; and such redemption shall be made in the manner provided in this act. The recorder shall note, on the margin of the record of the certificate of sale, a description of the property thus redeemed, and shall specifically set forth the several amounts of taxes paid upon such redemption.

Political Code, Section 3818.

Section 1257.—PAYMENT UNDER PROTEST.—At any time after the assessment book has been received by the tax collector, and the taxes have become payable, the

owner of any property assessed therein, who may claim that the assessment is void in whole or in part, may pay the same to the tax collector under protest, which protest shall be in writing, and shall specify whether the whole assessment is claimed to be void, or if a part only, what portion, and in either case the grounds upon which such claim is founded; and when so paid under protest, the payment shall in no case be regarded as voluntary payment, and such owner may at any time within six months after such payment bring an action against the county, in the superior court, to recover back the tax so paid under protest. And if it shall be adjudged that the assessment, or the part thereof referred to in the protest, was void on the ground specified in the protest, judgment shall be entered against such county therefor; provided, that no assessment shall be declared void on account of deductions being made for mortgages where part payments have been made and not released upon the record.

Political Code, Section 3819.

Poll Taxes.—Every male inhabitant of this state, over twenty-one and under sixty years of age, except paupers, insane persons, and Indians not taxed, must annually pay a poll tax of two dollars; provided, the same be paid between the first Monday in March and the first Monday in August; but if not paid prior to the first Monday in August, then it shall be three dollars; provided further, that nothing herein shall affect any laws imposing a greater poll tax upon inhabitants ineligible to citizenship.

Political Code, Section 3839.

Poll tax must be collected by the assessors between the first Monday in March and the last Monday in December of the same year.

The assessor must demand payment of poll tax of every person liable therefor, and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any personal property owned by such person.

The sale may be made after three hours verbal notice of time and place.

Every person indebted to one who neglects or refuses, after demand, to pay a poll tax, becomes liable therefor, and must pay the same for such other person after service upon him by the collector of a notice in writing, stating the name of such person.

Every officer authorized to draw the warrants for or to pay the salary or fees of any officer is the debtor of such officer within the meaning of the law.

Every person paying the poll tax of another may deduct the same from any indebtedness to such other person.

The assessor must deliver the poll tax receipt, filled out with the name of the person owing the taxes, to the purchaser of property at any such sale; in other cases he must deliver it, filled out in like manner, to the person paying the tax.

The receipt so delivered is the only evidence of payment.

Whenever the name of a person not liable for poll tax is erroneously entered upon said poll tax roll, or whenever the assessor has failed to note the payment of a poll tax lawfully assessed, if paid, the board of supervisors may, upon proof thereof, order the necessary correction to be made on the poll tax roll and the assessment roll whereon the same may appear.

If any person, assessed for a property tax has not paid to the assessor the poll tax due from him, or for which he is liable, it, with thirty-three and one-third per cent in addition thereto, constitute a lien upon the property assessed to such person, to attach from the first Monday in March in each year, and must be collected in the same manner and at the same time as delinquent taxes are collected.

Political Code, Sections 3839, 3840, 3846, 3848, 3849, 3850, 3851, 3859, 3860.

Section 1258.—SALE OF PROPERTY PURCHASED BY STATE.—Whenever the state shall become the owner of any property sold for taxes and the deed to the state has been filed with the controller as provided herein, the controller may thereupon by a written authorization direct

the tax collector of the county, or city and county, to sell the property or any part thereof as in his judgment he shall deem advisable in the manner following: He must give notice of such sale by first publishing a notice for at least three successive weeks in some newspaper published in the county or city and county, or if there be no newspaper published therein, then by posting a notice in three conspicuous places in the county or city and county, one of which shall be at the United States postoffice nearest the land, in addition to a notice conspicuously posted on the land itself for the same period. Such notices must state specifically the place of and the day and hour of sale, and shall contain a description of the property to be sold and shall also contain a detailed statement of all the delinquent taxes, penalties, costs, interest, and expenses up to the date of such sale, and shall give the name of the person to whom the property was assessed for each year on which there may be delinquent taxes against said property or any part thereof; and said notice shall also embody a copy of the authorization received from the controller. It shall be the duty of the tax collector to mail a copy of said notice, postage thereon prepaid and registered, to the party to whom the land was last assessed next before the sale, at his last known post-office address. At the time set for such sale, the tax collector must sell the property described in the controller's authorization and said notices, at public auction to the highest bidder for cash in lawful money of the United States; but no bid shall be received or accepted at such sale for less than the amount of all the taxes levied upon such property and all costs and penalties for every year delinquent, as shown by the delinquent rolls for said years to the date of the execution of the deed to the state, and all expenses accrued to the date of the sale under this section, together with interest at seven per cent per annum from the first day of July following delinquency in each of said years to the date of the sale hereunder, computed upon the aggregate amount of such delinquent taxes, penalties and costs; provided, however, that if the board of supervisors of the county, or

city and county, in which any such property is situate, shall, by resolution entered upon their minutes, declare that, in their judgment, the property so owned by the state, and particularly described in said resolution, is not at that time of value great enough that it can be sold by the state for a sum equal to the amount of all taxes levied upon said property, and all interests, costs and penalties and expenses up to the date of such sale, and that it would be to the best interest of the state to sell the said property for a sum to be stated in said resolution less than the sum above named, upon receipt of a copy of said resolution, certified by the clerk of said board of supervisors, the state controller may thereupon, by written authorization, direct the tax collector of the county, or city and county, to sell the said property so described in said resolution for a sum not less than the sum stated in said resolution, together with the expenses of sale. The expense of giving the notice herein required shall be a charge against the property so advertised, and shall be collected by the collector, and no redemption of such property before said sale may be had without payment of such cost of advertising; and to secure the payment of such advertising cost the collector shall demand in advance, from the party or parties seeking to purchase, a deposit with said officer of a sum sufficient to defray such cost of advertising, which deposit shall be forfeited in the event said party or parties fail or refuse to purchase at such sale; provided, that if the party or parties so depositing fail to secure such property on their bid, such deposit shall be returned, and such advertising cost shall be collected from the successful purchaser.

Political Code, Section 3897.

Section 1259.—VOID SALE—FAILURE TO MAIL NOTICE TO PARTY LAST ASSESSED.—It has already been stated that tax laws are strictly construed, and that in order to make a valid tax title it must appear that everything was done from the beginning to the end of the tax proceedings which the law requires to be done. An

illustration of this statement is found in a case appealed to the Supreme Court of California from Mendocino County. It appeared on the trial of this case that the address of the person to whom the land in controversy was last assessed was well known to the tax collector, and that no copy of the notice of the proposed sale of the land by the state was mailed to the owner prior to the sale, as required by Section 3897 of the Political Code. It was held by the Supreme Court in this case that a sale by the state of land sold to it for non-payment of taxes is void, where the tax collector through whom such sale is made fails to mail a copy of the notice of sale to the person to whom the land was last assessed next before the sale, at the address shown on the assessment roll. The mailing of such notice, where the address of the party is known, or shown on the assessment roll so that it can be ascertained, is essential to the validity of a sale by the state of land purchased by it for delinquent taxes. (Decided by the Supreme Court of California, in the case of *Wright vs. Anglo-Californian Bank*, which decision is printed in Volume 42, California decisions, page 760.)

Section 1260.—SAVINGS BANK DEPOSITS.—Money and savings deposits of a savings bank invested in quasi-public corporation bonds of this state are not assessable as credits of the corporation. Double taxation does not necessarily consist in assessing the same property twice to the same person, but may consist in requiring a double contribution to the same tax on account of the same property, although the assessments are to different persons. The provision of subdivision six of Section 3617 of the Political Code that “credits, claims, debts and demands due, in or accruing for or on account of moneys deposited with savings and loan corporations or with building and loan corporations, shall for the purpose of taxation be deemed and treated as an interest in the property of such corporation, and shall not be assessed to the creditor or owner,” means that these moneys shall be considered as a part of the assets of the corporation, and taxable as such, and necessarily implies that

the corporation shall be subjected to this burden only while the deposits remain a part of its assets. (Decided by the District Court of Appeals in the case of Napa Savings Bank vs. County of Napa, which decision is printed in Volume 13, California Appellate decisions, page 625.)

Section 1261.—FRAUDULENT ASSESSMENT.—A taxpayer may go into the Superior Court of the county where he is assessed and obtain an injunction prohibiting the collection of a tax founded upon an assessment fraudulently and corruptly made, with the intention of discriminating against him, and for the purpose of causing him to pay more than his share of the public taxes. This was determined by the Supreme Court of California in a case in Alameda County, where the property owner alleged that the assessment was fraudulently made, at excessive values, in fixing which he was discriminated against. In this case the property owner tendered the legal tax, or an amount founded on the real value of the property, which was not accepted, and the suit followed. (Decided by the Supreme Court of California, in the case of Pacific Postal Telegraph Co. vs. Dalton, which decision is printed in Volume 51 of the Pacific Reporter, page 1072.)

Section 1262.—SEAT IN STOCK EXCHANGE.—In a case in San Francisco, the question was whether or not a seat in the San Francisco Stock and Exchange Board is taxable property, and the Supreme Court decided that it is not. The Court said that a seat in the Stock Exchange is merely a personal privilege of being and remaining a member of a voluntary association, with the consent of the associates, and is not property that will pass by a sale under the common writ of execution; and it has no such qualities as make it assessable and taxable as property. It is a mere right to belong to an association, with the latter's consent, and to enjoy certain personal privileges and advantages which flow from membership in the association. Those privileges and advantages cannot be conveyed without the consent of the

association, and a forced sale of them would not give the purchaser the right to occupy the seat. It is too impalpable to go into any category of taxable property. (Decided by the Supreme Court of California, in the case of City and County of San Francisco vs. Anderson, which decision is printed in Volume 36 of the Pacific Reporter, page 1034.)

Section 1263.—RAILROAD BONDS.—Bonds held by a permanent resident within the state, though issued by a non-resident corporation, and secured by mortgage on property outside the state, may be taxed in this state as property belonging to the resident. Bonds of a railroad corporation organized in Arizona, payable in New York, and secured by a mortgage in Arizona, were taxed in California, as the property of a permanent resident of the state, and the Supreme Court decided that the tax was valid under the provision of the Constitution which defines property for the purpose of taxation, and expressly declares it to include, among other things, moneys, credits and bonds. (Decided by the Supreme Court of California, in the case of Mackay vs. City and County of San Francisco, which decision is printed in Volume 45 of the Pacific Reporter, page 696.)

Section 1264.—TAXATION OF SHIP ON THE HIGH SEAS.—It has been held that a ship engaged in commerce on the high seas was taxable in the City and County of San Francisco, where the managing owner of the vessel resided there, although she had been temporarily registered in Washington, had received permanent registration at San Francisco, and had never been in the waters of California, and though some of her owners resided without the state. A vessel must be taxed at the place of her home port, although in fact she may be thousands of miles away on the high seas; and she is taxable only within the state in which her home port is situated. The taxation must be in the state of her home port, at which alone the vessel may be registered. And where the vessel has several owners, it is only the residence of the managing owner that is material.

Tangible personal property is ordinarily taxable only in the state where it is physically situated. When, however, we come to sea-going vessels, engaged in foreign or interstate commerce, and not employed in such commerce wholly within the waters of any one state, we find that from the nature of the property a different rule is necessarily adopted. Such a vessel goes where she may be called in the business in which she is engaged, and is in port in any jurisdiction only as an incident to that business, and therefore cannot properly be held to have an actual physical presence within any particular state. Under our shipping laws, however, every such vessel has what is called her "Home Port," the port to which she belongs, and which constitutes her local abiding place or residence, regardless of her actual location. It is only in the collection district comprising her home port that she may be permanently registered. (Decided by the Supreme Court of California, in the case of *Olson vs. City and County of San Francisco*, which decision is printed in Volume 82 of the *Pacific Reporter*, page 850.)

Section 1265.—TAXATION OF OIL LEASES.—

Where a land owner grants to a lessee the exclusive right to enter on the premises, and bore wells, and extract oil from them, this constitutes on the part of the oil company a claim to the possession of land, and can be assessed separately from the ownership in fee. The oil stratum also constitutes "minerals in and under the land," and the rights of the lessee are rights and privileges appertaining to such minerals, and hence are "real estate" within the meaning of Section 3617 of the Political Code. The rights of an oil lessee to extract oil from land constitute a claim to the possession of land, which may be assessed and taxed; and if the taxes thereon are not paid and no personal property of the owner can be found, the assessor can forthwith proceed to sell the rights under the lease, and give immediate possession to the purchaser. (Decided by the Supreme Court of California, in the case of *Graciosa Oil Co. vs. Santa Barbara*

County, which decision is printed in Volume 99 of the Pacific Reporter, page 483.)

Section 1266.—CORPORATION STOCK.—Corporate stock of domestic corporations owned by citizens is taxable at full value, less the value of the corporation property taxed in the state. (Decided by the Supreme Court of California, in the case of Canfield vs. Los Angeles County, which decision is printed in Volume 108 of the Pacific Reporter, page 705.)

Section 1267.—INHERITANCE TAXES.—For the Inheritance Tax Law, see under the subject about settlement of estates.

Section 1268.—CORPORATION TAXES.—A law was passed in 1911, providing for the taxation of public service and other corporations, banks, and insurance companies, for the benefit of the state. This law provides that taxes levied, assessed and collected upon railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing room car and palace car companies, refrigerator, oil, stock, fruit, and other car loaning and other car companies, operated upon railroads in this state; companies doing express business on any railroad, steamboat, vessel or stage line in this state; telegraph companies; telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies; banks, banking associations, savings and loan societies, and trust companies, shall be assessed and levied by the state board of equalization.

1. Public Service Corporations.—All railroad companies, including street railways, whether operated in one or more counties; all sleeping car, dining car, drawing-room car and palace car companies; all refrigerator, oil, stock, fruit and other car-loaning and other car companies operating upon the railroads in this state; all companies doing

express business on any railroad, steamboat, vessel, or stage line in this state; all telegraph and telephone companies; and all companies engaged in the transmission or sale of gas or electricity; shall annually pay to the state a tax upon their franchise, roadways, rails, rolling stock, pipes, rights of way, and other property, or any part thereof used exclusively in the operation of their business in this state, computed as follows: Said tax shall be equal to the percentages hereinafter fixed upon the gross receipts from operation of such companies within this state. When such companies are operating partly within and partly without this state, the gross receipts on business beginning and ending within this state, and a proportion, based upon a proportion of the mileage within this state to the entire mileage with which this business is done, passing through, into, or out of this state. The percentages above mentioned shall be as follows: On all railroad companies, four per cent; on all sleeping car, dining car, drawing-room car, palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies, three per cent; on all companies doing express business on any railroad, steamboat, vessel or stage, two per cent; on all telegraph and telephone companies, three and one-half per cent; on all companies engaged in the transmission or sale of gas and electricity, four per cent. Such taxes shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property above enumerated of such companies, except as otherwise provided in the Constitution of this state.

2. Insurance Companies.—Every insurance company or association doing business in this state shall annually pay to the state a tax of one and one-half per cent upon the amount of the gross premiums received upon its business done in this state, less return premiums and reinsurance by companies; provided, that there shall be deducted from said one and one-half per cent upon the gross premiums the amount of any county and municipal taxes paid by such companies on real estate owned by them in this state. This tax shall be in lieu

of all other taxes and licenses, state, county, and municipal, upon the property of such companies, except county and municipal taxes on real estate and except as otherwise provided in the Constitution of this state; provided, that when by the laws of any other state or country, any tax, fines, penalties, licenses, fees, deposits of money or of securities, are imposed on insurance companies of this state doing business in such other state or country, or their agents therein, in excess of such taxes, the same impositions and prohibitions of whatever kind must be imposed by the insurance commissioner upon insurance companies of such other state or country doing business in this state.

3. State and National Banks.—The shares of capital stock of all banks, organized under the laws of this state, or of the United States, or of any other state, and located in this state, shall be assessed and taxed to the owners or holders thereof by the state board of equalization, in the city or town where the bank is located, and not otherwise. There shall be levied and assessed upon such shares of capital stock an annual tax, payable to the state, of one per centum upon the value thereof. The value of each share of stock in each bank, except such as are in liquidation, shall be taken to be the amount paid in thereon, together with its pro rata of the accumulated surplus and undivided profits. The value of each share of stock in each bank which is in liquidation shall be taken to be its pro rata of the actual assets of such bank. This tax shall be in lieu of all other taxes and licenses, state, county, and municipal, upon such shares of stock and upon the property of such bank, except county and municipal taxes on real estate, and except as otherwise provided in the constitution of this state. In determining the value of the capital stock of any bank there shall be deducted from the value, as defined above, the value, as assessed for county taxes, of any real estate, other than mortgage interests therein, owned by such bank and taxed for county purposes. The banks shall be liable to the state for this tax, and the same shall be paid to the state by them

on behalf of the stockholders, and they shall have a lien upon the shares of stock and upon any dividends declared thereon to secure the amount so paid.

4. Tax on Unincorporated Banks, and on Branches and Agencies of Foreign Banks.—The moneyed capital, reserve, surplus, undivided profits, and all other property belonging to unincorporated banks or bankers of this state, or held by any bank located in this state which has no shares of capital stock, or employed in this state by any branches, agencies, or other representatives of any banks doing business outside of the State of California, shall be likewise assessed and taxed to such banks or bankers by the said board of equalization, in the same manner as above provided for incorporated banks, and taxed at the same rate that is levied upon the shares of capital stock of incorporated banks. In the case of a branch, an agency, or other representative of any bank doing business outside of this state, the capital of said branch, agency, or representative used in this state shall be taken to be the average amount owed by the said branch, agency, or representative to the bank of which it is a branch, agency, or representative during the year ending the first Monday in March. The value of said property shall be determined by taking the entire property invested in such business, together with all reserve, surplus, and undivided profits, at their full cash value, and deducting therefrom the value as assessed for county taxes of any real estate, other than mortgage interests therein, owned by such bank or banker and taxed for county purposes. Such taxes shall be in lieu of all other taxes and licenses, state, county, and municipal, upon the property of the banks and bankers mentioned herein, except county and municipal taxes on real estate, and except as otherwise provided in the Constitution of this state. All moneyed capital and property of the banks and bankers mentioned in this paragraph shall be assessed and taxed at the same rate as an incorporated bank. In determining the value of the moneyed capital and property of the banks and bankers mentioned herein, the state

board of equalization shall include and assess to such banks property and everything of value owned or held by them which would go to make up the value of the capital stock of such banks and bankers, if the same were incorporated and had shares of capital stock.

The word "banks" as used in this act shall include banking associations, incorporated banks and bankers, branches, or other representatives of other banks doing business outside of the State of California, Savings and Loan Societies, and such Trust Companies as conduct the business of receiving money on deposit, but shall not include building and loan associations.

5. Tax on Franchise.—All franchises other than those of public service corporations, insurance companies, and state or national banks, shall be assessed at their actual cash value, after making the due deductions for good will, and shall be taxed at the rate of one per centum each year, and the tax collected thereon shall be exclusively for the benefit of the state. This franchise shall include the actual exercise of the right to be a corporation and to do business as a corporation under the laws of this state, and the actual exercise of the right to do business as a corporation in this state, when such right is exercised by a corporation incorporated under the laws of any other state or country; also the right, authority, privilege, or permission to maintain wharves, ferries, toll roads and toll bridges, and to construct, maintain or operate, in, under, above, upon, through or along any streets, highways, public places or waters, any pipes, canals, ditches, tanks, conduits or other means for conducting water, oil, or other substances.

6. State Corporation License Tax Not Repealed.—The new law does not repeal the corporation license tax, and is not to be construed so as to release any corporation from the payment of the annual license tax provided for by law.

7. Gross Receipts From Operation Defined.—The term "gross receipts from operation" as used in this act is

defined to include all sums received from business done within this state during the year ending the 31st day of December last preceding, including the company's proportion of gross receipts from any and all sources on account of business done by it within this state in connection with other companies.

In case of companies operating partly within and partly without this state, the gross receipts within this state shall be deemed to be all receipts on business beginning and ending within this state, and the proportion based upon the proportion of the mileage within this state to the entire mileage over which such business is done, of receipts on all business passing through, into or out of this state.

No deduction shall be allowed from the gross receipts from operation for commissions, rebates, or other repayments, except only such refunds as arise from errors or overcharges; nor shall any deduction be allowed for payments from gross receipts to other companies for any purpose whatsoever, except such refunds as arise from errors or overcharges.

Income derived from property not defined in this act as operative property shall not be included in the gross receipts for the purpose of determining the tax on the property and franchises.

8. **"Operative Property" Defined.**—The term "operative property" as used in this act shall include:

(a) In the case of railroad companies, including street railways: The franchises, roadway, roadbed, rails, rolling stock, rights of way, sidings, spur tracks, switches, signal systems, cranes and structures used in loading and unloading cars, fences along the right of way, poles, wires, conduits, power lines, piers, used exclusively in the operation of the railroad business, depot grounds and buildings, ferry boats, tugs and car-floats used exclusively in the operation of the railroad business; machine shops, repair shops, round houses, car barns, power houses, substations and other buildings, used in the operation of the railroad business and so much of the land on which said shops, houses, barns, and other

buildings are situate as may be required for the convenient use and occupation of said buildings.

(b) In the case of sleeping car, dining car, drawing-room car and palace car companies, refrigerator, oil, stock, fruit, and other car-loaning, and other car companies operating upon railroads in this state: The franchises, cars, and other rolling stock.

(c) In the case of companies doing express business on any railroad, steamboat, vessel, or stage line in this state: The franchises, cars, trucks, wagons, horses, harness, and safes.

(d) In the case of telegraph and telephone companies doing business in this state: The franchises, rights of way, poles, wires, pipes, conduits, cables, switchboards, telegraph and telephone instruments, batteries, generators, and other electrical appliances, and exchange and other buildings used in the telegraph and telephone business and so much of the land on which said buildings are situate as may be required for the convenient use and occupation of said buildings.

(e) In the case of companies engaged in the transmission or sale of gas or electricity: The franchises, towers, poles, wires, pipes, canals, tunnels, ditches, flumes, aqueducts, conduits, rights of way, dams, reservoirs, water and water rights used exclusively in the business of the transmission or sale of gas or electricity; transformers, substations, gas-holders, gas and electric generators, switches, switchboards, meters, electrical and gas appliances, oil tanks, power plants, power houses, and other buildings and structures used in the operation of the business of the transmission or sale of gas or electricity, and so much of the land on which said buildings and structures are situate as may be required for the convenient use and operation of said buildings.

Provided, that the operative property of the companies enumerated shall also include any other property not above enumerated that may be reasonably necessary for use by said companies exclusively in the operation and conduct of the particular kinds of business enumerated in this act.

9. Operative Property Exempt From Local Taxation.—The operative property mentioned above in subdivisions (a), (b), (c), (d), and (e), shall not be subject to taxation for county, municipal, or district purposes, except as otherwise provided for in the Constitution and laws of this state.

Provided, however, that when any piece or parcel of property in this state owned by any of the companies mentioned is used partially by such company for any use reasonably necessary to the operation of any of the lines of business enumerated, and such property is also partially rented to or used by others or is partially used by the company for some other lines of business not among those so enumerated, or for purposes not reasonably necessary to the operation of any of said enumerated lines of business, it shall be considered operative property, in that proportion only which that part of the property mentioned in this proviso used by the company in the operation of any of said enumerated lines of business, bears to the whole of the property mentioned in this proviso.

10. Plants Under Construction.—Any property of the classes mentioned, owned by a company constructing a new railroad, street railway, telegraph or telephone system, or plant or system for the transmission or sale of gas or electricity, no part of which new road, line, plant, or system is in operation, and the same classes of property when held by an operating company solely for the construction of a new railroad or railway line, a new telegraph or telephone system, or a new plant or system for the transmission or sale of gas or electricity, and not to be used for betterments or additions to roads, lines, plants, or systems already under operation, shall not be considered operative property, and shall be subject to assessment and taxation for county, municipal, and district purposes. The property of any company shall be deemed to be in operation as to such part of the new road, line, plant, or system as may be in use as soon as it offers and renders service to the public for compensation; provided,

however, that the state board of equalization shall finally determine the fact of such operation and the liability of any such company to be taxed upon its gross receipts.

11. When no Service Is Rendered to Public.—When any property in this state belonging to a company of the classes named is rendering no service to the public in this state, even though it may be rendering service to the public in some other state or states, such property shall not be considered as operative property, and shall be subject to assessment and taxation for county, municipal and district purposes.

12. Report of Public Service Companies.—Such person or officer, as the state board of equalization may designate, of each company, shall, on or before the first Monday in March of each year, file with the said board a report signed and sworn to by one or more of said persons or officers, showing in detail for the year ending the thirty-first day of December last preceding, the various items as follows:

(1) The name of the company, its nature, whether a person or persons, a partnership (with names of partners), an association, or corporation, and under the laws of what state, territory or country organized, the nature of its business, the location of its principal place of business, the names and postoffice addresses of its president, secretary, auditor, treasurer, superintendent, and general manager, the location of its principal place of business in this state, the name and postoffice address of its chief officer or managing agent in this state, and the names and addresses of all subsidiary companies whose property and business are operated by it and the names and addresses of any company of which it may be subsidiary.

(2.) Each of the companies shall report, in such detail as the state board of equalization shall prescribe, all of its property in this state which comes under the definition of operative property. When any such company operates both

within and without this state it shall report the mileage over which it operates both within and without this state. It shall also report the location of said property within this state by counties, cities and counties, municipalities, and districts, in such manner and in such detail as said board of equalization shall prescribe. It shall also, at the same time, furnish a duplicate of the report covering so much of said property as is located in any county, city and county, municipality, or district, to the assessor of the county, city and county, city, or district in which such property is located.

The state board of equalization may require the filing in its office of maps descriptive of all the operative property of any such companies, and may prescribe the form and size of such maps and the details to be shown therein, and may require that similar maps descriptive of the operative property within each county, city and county, municipality, or district, shall be filed in the assessor's office in each county, city and county, city, or district in which any of said property is located.

(3.) The amount of capital stock issued, and the amount of money received therefor, showing separately the capital stock issued and the money received therefor of the operating company and of each subsidiary company in this state.

(4.) The dividends paid during the year ending the thirty-first day of December last preceding, the surplus fund, if any, on said thirty-first day of December, or between such periods as the state board of equalization may determine, those of the operating company and of each subsidiary company in this state to be shown separately.

(5.) The funded and floating debts and the rate of interest thereon, showing separately the debts of the operating company and of each subsidiary company in this state, on the thirty-first day of December last preceding.

(6.) The market value of the stock and of the outstanding bonds, or, when said stock or bonds have no market value, the actual value thereof, for such periods and for such dates as the state board of equalization shall prescribe.

(7.) The amounts expended for improvements during the year ending the thirty-first day of December last preceding, how expended and the character of the improvements.

(8.) The gross receipts from operation within this state for the year ending the thirty-first day of December last preceding, the gross receipts from such classes of business as the state board of equalization may designate, to be reported separately; also, where the property and business are partly within and partly without this state, the gross receipts for said period on all business beginning and ending entirely within this state, and that proportion of the gross receipts from all business passing through, into, or out of this state, which the mileage within this state bears to the total mileage over which such interstate business is done as further defined in section seven of this act.

(9.) The operating and other expenses.

(10.) The balances of profit and loss, between such periods as the state board of equalization may determine.

(11.) Such other matters as the state board of equalization may deem necessary.

(12.) Each such company shall include in its report the property and business of all subsidiary companies whose property and business are operated by it, whether by virtue of a lease, an operating contract or agreement, or by virtue of control through the ownership of stock or otherwise, even though such subsidiary companies maintain an independent legal existence and separate accounts.

The term "subsidiary company" is hereby defined as applying to a company which is merged in the operating system of an operating company in any of the ways above stated, whose property and franchises would be taxable by this act if the same were operated independently. No separate report need be rendered by a subsidiary company whose property, franchises, and operations are fully and completely covered by the report of an operating company, unless the state board of equalization shall deem such a separate report necessary.

13. Separate Reports of Certain Subsidiary Companies.—Each such company operating the property and business of a subsidiary company in some line of business to which a different percentage of the gross receipts is applied by this act from that applied to the gross receipts of the operating company, shall report such receipts of the subsidiary company separately.

14. Hearings and Decision by State Board.—If any assessor finds in the report of the operative property in his county, city and county, municipality, or district, furnished to him by any of the companies as required in this act, any piece or parcel of property which he regards as non-operative property, or partially operative and partially non-operative, he shall, within thirty days after receiving such report, notify the state board of equalization thereof by mail, which notice shall contain a general description of the property and the assessor's reasons for regarding the same as non-operative property. He shall also mail a copy of the notice to the company whose property is involved. The said board shall investigate the nature of the property and its use, and, if an agreement between the said board, the assessor and the company as to the proper classification of such property cannot be reached, then the said board shall, under such rules of notice as it may deem reasonable, set a date for a hearing, at which the assessor and the company may be present or represented. At such hearing the board shall, from the evidence presented and from the best information it can obtain, decide the matter in dispute, and determine whether such property is operative or non-operative, or in what proportion operative and in what proportion non-operative.

If the state board of equalization shall find in the report of operative property furnished to said board by any company under the provisions of this act, any piece or parcel of property which said board regards as non-operative property, or partially operative and partially non-operative, the board shall, within thirty days after receiving such report, notify

said company thereof in writing, which notice shall contain a general description of the property and the reasons for regarding the same as non-operative. It shall also mail a copy of the notice to any assessor in whose county, city and county, municipality, or district the property is located. If an agreement between the said board, the assessor, and the company as to the proper classification of such property cannot be reached, then the said board shall, under such rules of notice as it may deem reasonable, set a date for a hearing, at which the assessor and the company may be present or represented. At such hearing the board shall, from the evidence presented and from the best information it can obtain, decide the matter in dispute, and determine whether such property is operative or non-operative, or in what proportion operative and in what proportion non-operative.

15. Insurance Commissioner to Report.—The insurance commissioner of this state must on or before the last day of March in each year make and file with the state board of equalization a report showing:

(1.) All companies, domestic and foreign, and all firms, associations, or persons, engaged in the business of insurance in this state.

(2.) The total amount of the gross premiums received from its business in this state by each of said companies, firms, associations, and persons during the year ending the thirty-first day of December last preceding.

(3.) The amount of return premiums paid on business done in this state and the amount of reinsurance on business done in this state paid to other insurance companies or associations authorized to do business in this state, by said companies, firms, associations, and persons, during said year.

(4.) The amount of any county and municipal taxes paid during said year by such companies on real estate owned by them in this state, and where said real estate is located.

In making this report he shall list separately all those companies, firms, associations, or persons, which are subject to a tax at a rate higher than one and one-half per cent on

their gross premiums, or to any additional tax or burden, and shall indicate in each case the amount and character of said tax or burden.

16. Additional Statements by Insurance Companies.—

Every company, firm, association, or person engaged in the business of insurance in this state shall file with the insurance commissioner on or before the first Monday in March in each year such statements in addition to, or in modification of, the statements required to be rendered under the provisions of the Political Code as said insurance commissioner shall deem necessary to enable him to prepare the report required of him in this act, and said statements shall be verified in the same manner as is provided for the verification of other statements by insurance companies, except that those filed by foreign companies shall be verified by the oath of the manager thereof residing within this state.

17. Bank Reports.—The president, secretary, treasurer, cashier, or such other officer as the state board of equalization may determine, of every bank shall on the first Monday in March, or within ten days thereafter, make and file with the state board of equalization a sworn statement showing the condition of said bank at the close of business on the first Monday in March, and showing the amount of its authorized capital stock, the number of shares issued and the par value thereof, the amount received for stock issued, the amount of its surplus and undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each as of record on the books of the bank at the close of business on the first Monday in March; or, in the case of unincorporated banks and bankers, of banks having no capital stock, and of branches, agencies, or other representatives of banks doing business outside of this state, the moneyed capital, reserve, surplus, undivided profits, and other taxable property used by them in the banking business in this state; also a description of the real estate, other than mortgage interests therein, and the value of each piece thereof as assessed for the purpose of county taxation

for the then current fiscal year. Branches, agencies, or other representatives of banks doing business outside of this state, shall report the average amount owed by said branches, agencies, or other representatives, to the banks of which they are branches, agencies, or representatives, during the year ending the first Monday in March; also a description of the real estate other than mortgage interests therein, and the value of each piece thereof as assessed for the purpose of county taxation for the then current fiscal year. The state board of equalization shall prescribe the form of reports, the manner of their verification, and may require the submission of tax receipts, or copies thereof certified to be correct by any notary public, in order to verify the statements as to the assessed value of the real estate, and may require such further information or statements as said board may deem necessary.

18. Owners of Franchise Report.—The owner or holder of every franchise subject to taxation shall within ten days after the first Monday in March in each year, make a written report to the state board of equalization, signed and sworn to by the holder or owner himself, if an individual, or by one of the copartners if such owner or holder is a copartnership, or by the president or vice-president and the treasurer or secretary, if the owner is a corporation, containing such a concise statement or description of every franchise possessed or enjoyed on said day by such owner or holder, as the state board of equalization may prescribe, a copy of the law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation, or burden imposed upon such franchise, or under which the same is enjoyed, and containing also:

(1.) The name of the company, its nature, whether a person or persons, a partnership (with names of partners), an association, or corporation, and under the laws of what state, territory, or country organized, the nature of its business, the location of its principal place of business, the

names and postoffice addresses of its president, secretary, auditor, treasurer, superintendent, and general manager, the location of its principal place of business in this state, the name and postoffice address of its chief officer or managing agent in this state, and the names and addresses of all subsidiary companies whose property and business are operated by it.

(2.) The amount of its authorized capital stock, the amount thereof issued and outstanding on the first Monday in March, and the amount paid in thereon or the value of the property received therefor.

(3.) The funded and floating debts and the interest paid thereon showing separately the debts of the operating company and of any subsidiary companies in this state on the thirty-first day of December last preceding.

(4.) The market value of the stock and of the outstanding bonds, or, when said stock or bonds have no market value, the actual value thereof, for such periods and for such dates as the state board of equalization shall prescribe.

(5.) The assessed value of its property as assessed for the current fiscal year in each county, city and county, and city in the state for the purposes of taxation, and if any property of such corporation be assessed and taxed outside of the State of California the place where assessed, the amount of such assessment and taxes there paid during such current fiscal year.

In case the company, person, firm, association, or corporation making such report cannot or does not fairly and fully state the facts and matters contained in the foregoing subdivisions 1 to 5 inclusive, then such company, person, firm, association, or corporation must render an additional report containing the following matters, to wit:

(6.) The dividends paid during the year ending the thirty-first day of December last preceding, the surplus fund, if any, on said thirty-first day of December, or between such periods as the state board of equalization may determine. Those of the operating company and of each subsidiary company in this state to be shown separately.

(7.) The gross receipts from all sources for the year ending the thirty-first day of December last preceeding, from the entire property and business, the gross receipts from such classes of business as the state board may designate, to be reported separately; also, where the property and business are partly within and partly without this state, the gross receipts for said period on all business beginning and ending entirely within this state, and that proportion of the gross receipts from all business passing through, into, or out of this state, which the mileage within this state bears to the total mileage over which such interstate business is done as further defined in section seven of this act.

(8.) The operating and other expenses.

(9.) The balances of profit and loss, between such periods as the state board of equalization may determine.

(10.) Such other matters as the state board of equalization may deem necessary.

The state board of equalization shall ascertain and determine from the foregoing reports or from the best information it can obtain the actual cash value on the first Monday in March of each such franchise, and shall assess and levy the taxes thereon.

19. Arbitrary Assessment in Case of Failure or Refusal to Report.—If any company mentioned shall fail or refuse to furnish to the state board of equalization within the time prescribed in this act the verified report provided for in this act, the state board of equalization must make an estimate of the amount of the gross receipts, gross premiums, value of the shares of capital stock, or value of the franchises, of such company, and must assess the same at the amount thus estimated, which assessment shall be the assessment upon which the taxes upon the property or franchise of the company for such year shall be levied and collected. And if in the succeeding year any such company shall again fail or refuse to furnish the verified report required by this act, the state board shall make an estimate of the amount of the gross receipts, gross premiums, value

of the shares of capital stock, or value of the franchise of such company, which estimate shall not be less than twice the amount of the estimate made by said board in the previous year, and the said estimate so made shall be the assessment upon which the taxes upon the property or franchise of the company for such year shall be levied and collected. In case of each succeeding consecutive failure or refusal the said board shall follow the same procedure until a true statement shall be furnished.

20. Penalty for Failure or Refusal to Report.—Any company failing or refusing to make and furnish any report prescribed in this act, or rendering a false or fraudulent report, shall be guilty of a misdemeanor and subject to a fine of not less than three hundred dollars and not exceeding five thousand dollars for each such offense.

21. Penalty for False Report.—Any person required to make, render, sign, or verify any report, who makes any false or fraudulent report, with intent to defeat or evade the assessment required by this act to be made, shall be guilty of a misdemeanor, and shall for each such offense be fined not less than three hundred dollars and not more than five thousand dollars, or be imprisoned not exceeding one year in the county jail of the county where said report was verified, or be subject to both said fine and imprisonment, at the discretion of the court.

22. Extension of Time for Filing Report.—The state board of equalization may, for good cause shown, by order entered upon its minutes, extend for not exceeding thirty days, the time fixed in this act for filing any report herein provided for.

23. Bank Waiver of Assessment to Individual Stockholder.—If any bank shall by resolution of its board of directors, request the state board of equalization to assess to and in the name of such bank so requesting, the entire taxable value of all the shares of the capital stock of such bank, as determined by said state board, instead of assessing such

shares to and in the name of the individual stockholders or shareholders owning the same, and if such bank shall promise that it will, upon being notified by said state board, of such assessment thereof to said bank, and of the amount of taxes to be paid upon such assessment, pay such taxes at the times when taxes assessed and levied under this act are due and payable; which request to assess said bank and promise to pay said tax shall be in substantially the following form:

The state board of equalization is hereby instructed to assess in the name of this bank and not to the individual stockholders or shareholders therein, the taxable value of all the shares of capital stock in this bank, and such bank hereby promises to pay to the state treasurer the amount of the tax levied upon such assessment when such taxes are due and payable under the laws of this state.

By.....
(Here insert title of official signing.)

Then the state board may assess the capital stock to and in the name of such bank, and said promise to pay the taxes shall be binding upon such bank, and collection of such taxes from such bank may be enforced.

24. Correction of Assessment.—The state board shall have power at any time on or before the first Monday in July to correct the record of assessments for state taxes, and may increase or decrease any assessment therein if in its judgment the evidence presented or obtained warrants such action.

25. Taxes, When Due and When Delinquent.—The taxes assessed and levied as provided by the provisions of this act, shall be due and payable on the first Monday in July in each year, and one-half thereof shall be delinquent on the sixth Monday after said first Monday in July at six o'clock P. M., and unless paid prior thereto, fifteen per cent shall be added to the amount thereof, and unless paid prior to the first Monday in February next thereafter at six o'clock p. m., an additional five per cent shall be added to the amount thereof; and the unpaid portion, or the remaining

one-half of said taxes shall become delinquent on the first Monday in February next succeeding the day upon which they became due and payable at six o'clock P. M.; and if not paid prior thereto five per cent shall be added to the amount thereof; provided, that all taxes provided for or levied under this act which are not fully secured by real property are due and payable at the time the assessment is made. When in the opinion of the state board of equalization any of the taxes provided for are not a lien upon real property sufficient to secure the payment of the taxes, said board may direct the controller, or his duly authorized representative, to collect the same at any time before the first Monday in August thereafter, and the controller may collect the taxes by seizure and sale of any property owned by the company against whom the tax is assessed.

26. Sale of Property for Taxes.—The sale of any property seized shall be made at public auction and of a sufficient amount of the property to pay the taxes, penalties and costs, and be made after one week's notice of the time and place of such sale given by publication in a newspaper of general circulation published in the county where the property seized is situate, or if there be no newspaper of general circulation published in such county, then by posting of such notice in three public places in such county. On payment of the price bid for any property sold, the delivery thereof with bill of sale executed by the controller vests the title in the purchaser. The unsold portion of any property so seized, may be left at the place of sale at the risk of the owner. All of the proceeds of any such sale in excess of the taxes, penalties, and costs, must be returned to the owner of the property sold, and until claimed must be deposited in the state treasury subject to the order of the owner thereof, his heirs, or assigns.

27. Taxes a Lien.—The taxes levied under the provisions of this act shall constitute a lien upon all the property and franchises of every kind and nature belonging to the companies subject to taxation for state purposes, which lien

shall attach on the first Monday in March of each year. Every tax herein provided for has the effect of a judgment against the company, and every lien created by this act has the effect of an execution duly levied against all property of the delinquent; the judgment is not satisfied nor the lien removed until such taxes, penalties, and costs are paid, or the property sold for the payment thereof.

28. Taxes Erroneously Collected.—Whenever any taxes, penalties, or costs collected and paid under the provisions of this act shall have been paid more than once, or shall have been erroneously or illegally collected, or when any taxes shall have been collected and paid pursuant to this act upon a computation erroneously made by reason of clerical mistake of the officers or employees of the state board of equalization, or shall have been computed in a manner contrary to law, the state board of equalization shall certify to the state board of examiners the amount of such taxes, penalties, or costs, collected in excess of what was legally due, from whom they were collected or by whom paid, and if approved by said board of examiners, the same shall be credited to the company or person to whom it rightfully belongs, at the time of the next payment of taxes. No claim for such credit shall be so audited, approved, allowed, or paid unless presented within one year after the payment sought to be refunded.

29. Protest of Taxes.—Any company, person, or association dissatisfied with any assessment made by the state board of equalization may bring an action against the state treasurer for the recovery of any taxes, penalties, or costs paid on such assessment, but no such action may be brought later than the third Monday in February next following the day on which the taxes were due, nor unless such company, person or association shall have filed with the state controller at the time of payment of such taxes a written protest stating whether the whole assessment is claimed to be void, or if a part only, what part, and the grounds upon which such claim is founded; and when so paid under protest the

payment shall in no case be regarded as voluntary. Whenever under the provisions of this section an action is commenced against the state treasurer, a copy of the complaint and of the summons must be served upon the treasurer, or his deputy. At the time the treasurer demurs or answers, he may demand that the action be tried in the Superior Court of the County of Sacramento, which demand must be granted. The attorney general must defend the action.

30. Controller to Send Notice of Delinquent Taxes.—Within ten days after the first Monday in February, the controller shall send by mail to the last known address of any company whose taxes are delinquent a notice of the amount of said taxes, penalties, and costs, and that if the said taxes, penalties, and costs are not paid on or before the first Monday in March next thereafter at six o'clock P. M., the delinquent company if it be a domestic corporation will forfeit its charter to the state, and that if the delinquent company be a foreign corporation it will forfeit its right to do business in this state.

31. Charter Forfeited for Delinquent Taxes.—If the taxes, penalties, and costs are not paid within the time specified in said notice, the controller shall, on said first Monday in March at six o'clock P. M., mark on the record of assessments for state taxes opposite the assessment of the delinquent company the words "charter forfeited to the state," if the delinquent company be a domestic corporation, and thereupon said charter shall be so forfeited; and if the delinquent company be a foreign corporation the words "right to do business forfeited," and thereupon said right to do business shall be so forfeited. He shall at once report to the secretary of state the name and number of charter of each corporation whose charter or right to do business has been forfeited for non-payment of taxes, and the secretary of state shall at once report the same to the governor. The governor shall forthwith issue his proclamation, declaring that the charters of such domestic corporations have been forfeited and the right of such foreign corporations to do business in

this state has been forfeited. Said proclamation shall be filed immediately in the office of the secretary of state, and the secretary of state shall immediately cause a copy of said proclamation to be published in one issue of one daily newspaper of general circulation published at the state capital, of one daily newspaper of general circulation published in the City and County of San Francisco, and of one daily newspaper of general circulation published in the city of Los Angeles. The secretary of state shall thereupon transmit a certified copy of the proclamation to each county clerk in this state, who shall file the same in his office.

32. Relief from Forfeiture.—Any such corporation making subsequent payment of all taxes, penalties, and costs due the state, and in addition thereto an amount equal to the taxes levied under this act for the year in which such forfeiture occurred, for each year subsequent to such forfeiture and to the time of such redemption, shall be relieved of such forfeiture, and the controller shall notify the secretary of state thereof, and the secretary of state shall annually on the first Monday in April transmit to the county clerk of each county in this state a list of the corporations so paying, and which have been relieved of such forfeiture, which list shall be by said county clerk filed in his office; provided, the rehabilitation of a corporation under the provisions of this act shall be without prejudice to any action, defense or right which accrued by reason of the original forfeiture; and provided, that in case the name of any corporation which has suffered the forfeiture prescribed in this act, or a name so closely resembling the name of such corporation as will tend to deceive, has been adopted by any other corporation since the date of said forfeiture, then said corporation having suffered such forfeiture shall be relieved therefrom pursuant to the terms of this section only upon the adoption by said corporation seeking revivor of a new name, and in such case nothing in this act contained shall be construed as permitting such corporation to be revived or carry on any business under its former name; and such corporation shall have the right

to use its former name or take such new name only upon filing an application therefor with the secretary of state and upon the issuing of a certificate to such corporation by the secretary of state, setting forth the right of such corporation to take such new name or use its former name, as the case may be; provided, however, that the secretary of state shall not issue any certificate permitting any corporation to take or use the name of any corporation heretofore organized in this state, and which has not suffered a forfeiture prescribed by this act, or to make or use a name so closely resembling the name of such corporation heretofore organized in this state as will tend to deceive.

33. State Board to Equalize Assessments.—Whenever the state board of equalization is satisfied after investigation that any county assessor, or board of equalization, has assessed any real estate belonging to any bank above its full cash value and has thereby unjustly reduced the amount of taxes due the state from said bank, said state board shall, under such rules of notice to the clerk of the board of supervisors of the county affected thereby as the said state board shall deem reasonable, equalize the assessed value of such real estate, and shall upon completion of said equalization issue an order to said assessor or board of equalization and to the county auditor of the county in which said real estate is located, fixing the assessed value of said real estate. The value so equalized and fixed, and no other, shall be deemed the value, as assessed for county taxes, of such real estate, and the sole basis of taxation upon such real estate for county taxes.

The state board of equalization shall immediately after the county and city assessments have been completed, ascertain the value of any real estate belonging to any insurance company as assessed and equalized for purposes of county and of city taxation. Whenever the state board of equalization is satisfied after investigation that any county, city and county, city, or district assessor, or board of equalization, has assessed any real estate belonging to any insurance company

above its full cash value and has thereby unjustly reduced the amount of taxes due the state from said insurance company, said state board shall, under such rules of notice to the clerk of the board of supervisors of the county or the proper officer of the city affected as the board shall deem reasonable, equalize the assessed value of such real estate and shall, upon the completion of said equalization, issue an order to said assessor or board of equalization and to the county, city and county, city, or district auditor or clerk of the county, city and county, city, or district in which said real estate is located, fixing the assessed value of said real estate. The value so equalized and fixed, and no other, shall be deemed the value, as assessed for county, city and county, city, or district taxes, of such real estate, and the sole basis of taxation upon such real estate for county, municipal and district taxes.

Act of the Legislature, approved April 1, 1911.

PART XIV.

TRUST DEEDS.

Section 1269.—EXTENT OF THIS SUBJECT.—It is not intended to include in this subject any of the law about trusts created by last wills, or trusts in personal property, or trusts created by operation of law. It is only intended to give here the most important points about trust deeds of real estate, and particularly about trusts created by deed for the benefit of creditors of the grantor.

Section 1270.—TRUST DEED DEFINED.—A trust deed is a conveyance to a person in trust, to do the things specified in it. The legal title passes to the grantee. A trust creates an obligation upon a person, arising out of a confidence reposed in one who has the legal title to property conveyed to him, that he will faithfully apply and deal with such property according to the confidence reposed, as expressed in the conditions named in the deed.

Section 1271.—TRUST DEED MUST BE IN WRITING.—A trust deed must be in writing, and must be subscribed by the grantor and by the trustee, or by the agent of the trustee authorized by writing.

Civil Code, Section 852.

Section 1272.—PURPOSES FOR WHICH TRUST DEED MAY BE MADE.—Trusts may be created by deed for any of the following purposes:

1. To sell real property, and apply or dispose of the proceeds in accordance with the instrument creating the trust.
2. To mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property, and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family, during the life of such person, or for any shorter term.

4. To receive the rents and profits of real property, and to accumulate the same for the purposes and within the limits named in the deed.

Civil Code, Section 857.

Section 1273.—PROFITS OF LAND LIABLE TO CREDITORS.—Where a trust is created to receive the rents and profits of real property, and no direction for accumulation is given, the surplus of such rents and profits, beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created, is liable to the claims of the creditors of the beneficiary, and may be garnisheed in the hands of the trustee.

Civil Code, Section 859.

Section 1274.—NUMBER OF TRUSTEES.—The law does not limit the number of trustees named in a deed of trust. The grantor may appoint any number he desires.

Section 1275.—ACTION BY TRUSTEES.—Where the trust is vested by the deed in several trustees, they must all unite in the execution of the trust; but, in case any one or more of them is dead, the trust may be executed by the survivors, unless the deed creating the trust directs otherwise.

Civil Code, Section 860.

Section 1276.—BENEFICIARIES TAKE NO TITLE BY DEED.—The deed of trust vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Civil Code, Section 863.

Section 1277. — DEVISE AND TRANSFER OF TRUST PROPERTY.—The grantor in a trust deed may direct to whom the real property to which the trust relates shall belong, in the event of the failure or termination of the trust. He may also transfer the property by deed, or devise it by his will, subject to the execution of the trust. The devisee or grantee of trust property acquires a legal estate in the property, as against all persons except the trustees and those lawfully claiming under them.

Civil Code, Sections 864, 865.

Section 1278. — WHEN BENEFICIARY CANNOT DISPOSE OF HIS INTEREST IN TRUST ESTATE.—Where a trust is created by deed, to pay the beneficiary the rents and profits of real property, or an annuity out of such rents and profits, the deed may lawfully contain the condition that the beneficiary must not dispose of his interest in the trust during his life, or for a term of years.

Civil Code, Section 867.

Section 1279. — POWER OF TRUSTEE.—The trustees have only power to carry out the directions and purposes of the trust. They cannot go outside of the provisions of the deed. Every transfer or other act of the trustees, contrary to the terms of the trust, is absolutely void.

A trustee is a general agent for the trust property. Where there are several co-trustees, all must unite in any act to bind the trust property, unless the deed of trust otherwise provides.

Civil Code, Sections 870, 2258, 2267, 2268.

Section 1280. — LIABILITY FOR BREACH OF TRUST.—A trustee who uses or disposes of the trust property for his own advantage, and not in furtherance of the purposes of the trust deed, must account for all profits so made by him, or pay the value of his use of the trust fund; or, if he has disposed of the trust property, he must replace it, or account for its proceeds, with interest. If a

trustee makes an honest mistake in the performance of his duty, but goes outside of his legitimate powers, he is liable to make good to the beneficiary whatever is lost by his error.

Civil Code, Sections 2237, 2238.

Section 1281.—COMPENSATION OF TRUSTEE.—

A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

Sums expended by a trustee, in payment of taxes, are valid charges on the property, though the deed contains no express authority for such payments. (Decided by the Supreme Court of California, in the case of Savings & Loan Society vs. Burnett, which decision is printed in Volume 39 of the Pacific Reporter, page 922.)

When a deed of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two or more trustees the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

Civil Code, Sections 2273, 2274.

Section 1282.—TERMINATION OF THE TRUST.—

A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the deed of trust reserves a power of revocation to the trustor.

Civil Code, Sections 2279, 2280.

Section 1283.—DISCHARGE OF TRUSTEE.—A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;
3. By such means as may be prescribed by the deed of trust;
4. By the consent of the beneficiary, if he have capacity to contract;
5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or,
6. By the superior court.

The superior court may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

Civil Code, Sections 2282, 2283.

Section 1284.—APPOINTMENT OF TRUSTEE IN CASE OF VACANCY.—The superior court may appoint a trustee whenever there is a vacancy and the deed of trust does not provide a practicable method of appointment. If the beneficiary of the trust is of the age of fourteen years, he may nominate such trustee, and if such nominee is found competent to discharge the duties, he is entitled to be appointed such trustee in preference to any other person.

Act of the Legislature, approved February 25, 1911.

The deed of trust may provide for some other method of appointing trustees; as a trust deed to secure a note to a bank, providing that the bank may from time to time appoint other trustees on the death of those named in the deed. (Decided by the Supreme Court of California, in the case of *Sacramento Bank vs. Murphy*, which decision is printed in Volume 115 of the *Pacific Reporter*, page 232.)

Section 1285.—SURVIVORSHIP BETWEEN CO-TRUSTEES.—On the death, renunciation, or discharge of one of several co-trustees the trust survives to the others.

Civil Code, Section 2288.

Section 1286.—CREDITOR AS TRUSTEE.—A creditor of the grantor may be named in the trust deed as trustee, and may be given the power to sell property and apply the proceeds to payment of the debt. When the debt and expenses of sale are paid, the remainder must go to the grantor. (Decided by the Supreme Court of California, in the case of *Cary vs. Brown*, which decision is printed in Volume 62 of the California Reports, page 373.)

Section 1287.—BANK MAY BUY PROPERTY FROM STOCKHOLDER TRUSTEES.—Stockholders of a bank are not the bank, even if they are trustees of a trust deed to the bank; and a sale to the bank by the trustees is not a sale to themselves. If there is a deficiency, after the sale upon a promissory note for which the trust deed was security, an action lies upon it to recover the balance due after crediting the amount received from the sale less the costs of sale. (Decided by the Supreme Court of California, in the case of *Copsey vs. Sacramento Bank*, which decision is printed in Volume 133 of the California Reports, page 659.)

Section 1288.—RECONVEYANCE TO GRANTOR.—When the trust is satisfied before sale of the property, it is the duty of the trustee to convey the property back to the grantor. Thus, if a trust deed is made of property, with power of sale to dispose of the property and apply the proceeds to the debt of the grantor; if the grantor pays the debt before the trustee sells, the latter cannot keep the property, for the debt is wiped out, and the object of the trust is ended. (Decided by the Supreme Court of California, in the case of *Boswick vs. McEvary*, which decision is printed in Volume 62 of the California Reports, page 496.)

Section 1289.—REVOCATION BY DEED.—Where a trust deed provides that the grantor may revoke the trust by another deed made at a later date, the grantor, if he wishes to take advantage of the provision, must strictly

comply with the trust deed. He cannot revoke the trust by his will. (Decided by the Supreme Court of California, in the case of Carpenter vs. Cook, which decision is printed in Volume 60 of the Pacific Reporter, page 475.)

Section 1290.—POSSESSION OF ESTATE UPON TERMINATION OF TRUST.—Upon the termination of a trust, that has been created to manage and hold the property for the benefit of another during a limited period, the beneficiary is entitled to the immediate possession and enjoyment of the trust estate, as against all the trustees; and to have their account, as well as the amount of the estate in their hands, settled and determined; and such possession and enjoyment must not be postponed for the purpose of determining the rights of the trustees as between themselves. (Decided by the Supreme Court of California, in the case of Bermingham vs. Wilcox, which decision is printed in Volume 52 of the Pacific Reporter, page 822.)

Section 1291.—SUIT FOR BALANCE AFTER SALE.—After a sale under a trust deed securing a note, if the sale does not bring enough to pay the note, a suit may be brought by the creditor for any unsatisfied balance. (Decided by the Supreme Court of California in the case of Kraft vs. Bryan, which decision is printed in Volume 73 of the Pacific Reporter, page 745.)

Section 1292.—LEASE OF TRUST PROPERTY.—Where the deed creates the trust for a limited period, the trustees have no right to lease the property for a longer period. The lease will end when the trust ends, even if made for a longer term, because the trustees had no power to make a lease for a longer time than the life of the trust estate. (Decided by the Supreme Court of California, in the case of South End Warehouse Co. vs. Lavery, which decision is printed in Volume 107 of the Pacific Reporter, page 1008.)

Section 1293.—SALE OF TRUST PROPERTY.—

Where the deed gives the trustees power to sell, they may sell, without any court proceedings whatever. Notice of the sale must be given, in the manner provided by the terms of the deed. The sale must be made in the manner specified in the deed.

There is no foreclosure, and no redemption.

Section 1294.—FORM OF TRUST DEED.—The following is a form of trust deed:

This deed of trust, made this.....day of....., in the year one thousand nine hundred and....., between, of Alameda County, California, the party of the first part, and....., of San Francisco, California, the party of the second part, and, of San Francisco, California, the party of the third part, witnesseth: That whereas the said party of the first part has borrowed of the said party of the third part the sum of twenty-five thousand (25,000) dollars, in gold coin of the United States, and has agreed to repay *the same on the*.....day of....., in the year one thousand nine hundred and....., to the said party of the third part, in like gold coin with interest according to the terms of a certain promissory note, of even date herewith, executed and delivered therefor by the said party of the first part.

Now this indenture witnesseth, that the said party of the first part, in consideration of the aforesaid indebtedness to the said party of the third part; and for the purpose of securing the payment of said promissory note, and of any sum or sums of money, with interest thereon, that may now or hereafter be paid or advanced by, or may otherwise be due to, the parties of the second or third part under the provisions of this instrument, does by these presents grant unto the party of the second part, and to his successors and assigns, the piece or parcel of land situated in the County of Alameda, and State of California, described as follows:

.....

(Description.)

.....

And also, all the interest, or other claim or demand, which the said party of the first part now has or may hereafter acquire of, in and to said premises with the appurtenances.

To have and to hold, the same to the party of the second part and to his successors and assigns upon the trusts and confidence hereinafter expressed, to-wit:

Firstly, during the continuance of these trusts, the party of the second part and the party of the third part, their successors and assigns, are hereby authorized to pay, without previous notice all or any liens, and all or any incumbrances now subsisting, or that may hereafter exist upon said premises (excepting taxes and assessments imposed upon this deed of trust or the money secured hereby) which may in their judgment, affect said premises or these trusts; and they may in their discretion at the expense of said party of the first part, contest the payments of any such liens or encumbrances, or may defend any suit or proceeding that they may consider proper to protect the title to said premises, and may insure buildings on said premises, and these trusts shall be and continue as security to the party of the third part, and his assigns, for the repayment, in gold coin of the United States, of the money so borrowed by the said party of the first part and the interest thereon, and of all amounts so paid out and costs and expenses incurred, as aforesaid, with interest on such payment at the rate of one per cent per month until final payment.

Secondly, in case the said party of the first part shall well and truly pay, or cause to be paid, at maturity, in gold coin as aforesaid, all sums of money so borrowed, as aforesaid, and the interest thereon, and shall upon demand repay all other moneys secured or intended to be secured hereby and also the reasonable expenses of this trust, then the party of the second part, his successors and assigns, shall reconvey all the estate in the premises aforesaid to the party of the first part at his request and cost.

Thirdly, if default shall be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursements of any amounts herein provided to be paid, or of any interest thereon, then the said party of the second part, his successors or assigns, on application of the party of the third part, or his assigns, shall sell the above-granted premises, or such part thereof as in his discretion, he shall find it necessary to sell

in order to accomplish the objects of these trusts, in the manner following, namely: He shall first publish the time and place of such sale, with a description of the property to be sold, at least once a week for four weeks, in some newspaper published in said County of Alameda, and may from time to time postpone such sale by publication; and on the day of sale so advertised, or any day to which such sale may be postponed he may sell the property, so advertised, or any portion thereof at public auction, in any county where any part of said property may be situated, to the highest cash bidder; and the holder or holders of said promissory note, his agents or assigns and the party of the second part may bid and purchase at such sale.

And the party of the second part, or assigns, shall establish as one of the conditions of such sale, that all bids and payments for said property shall be made in like gold coin as aforesaid, and upon such sale he shall make, execute, and after due payment made, shall deliver to the purchaser or purchasers, his or their heirs and assigns, a deed or deeds of grant, bargain and sale of the above-granted premises, and out of the proceeds thereof shall pay,

First, the expenses thereof, together with the reasonable expenses of this trust, including counsel fees of five hundred dollars, in gold coin, which shall become due upon any default made by the said party of the first part in any of the payments aforesaid.

Second, all sums which may have been paid by the said party of the second or third part, their successors or assigns, or the holders of the note aforesaid, and not reimbursed, and which may then be due, whether paid on account of encumbrances or insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon; next the amount due and unpaid on said promissory note, with whatever interest may have accrued thereon; and lastly the balance or surplus of such proceeds, if any, to said party of the first part, his heirs or assigns.

And in the event of the sale of said premises or any part thereof, and the execution of a deed or deeds therefor, under these trusts, then the recitals therein of default and publication shall be conclusive proof of such default and of the due publication of such notice; and any such deed or

deeds with such recitals therein shall be effectual and conclusive against the said party of the first part, his heirs or assigns, and all other persons; and the receipt for the purchase money contained in any deeds executed to the purchaser, as aforesaid, shall be a sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money, according to the trusts aforesaid.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

.....(Seal.)

.....(Seal.)

.....(Seal.)

(Acknowledgment in usual form.)

PART XV.

ASSIGNMENT OF CONTRACTS, GUARANTY OF ACCOUNTS, AND POWERS OF ATTORNEY.

Assignment of Contracts.

Section 1295.—WHAT CAN BE ASSIGNED.—All contracts may be assigned, in California, with certain exceptions. The law seeks to do away with restrictions upon the power of the parties to assign their ordinary contracts. But the law does not intend to render assignable all contracts whatever, regardless of their nature or effect, and hence the rule of assignability must be taken with some qualifications.

In the first place, it was not intended to render null any agreement that the parties may have made on the subject. For if the contract itself provides in terms that it is not transferable, it cannot be transferred by an assignment, although it otherwise might be so. Leases, and the tickets usually issued by railroad companies, are familiar instances of this. And if the contract does not in so many words forbid the assignment, yet, if there are equivalent expressions, or language which excludes the idea of performance by another, the contract is not assignable. The question in every case must turn at last upon the intention of the parties.

If a contract provides that it shall not be assigned to a particular person, naming him, it cannot be assigned to that person.

In the next place, although the language used may not show an intention that the contract should not be assigned,

yet the nature of the case may be such that performance by another would be an essentially different thing from that contracted for. Thus, a picture by one artist is an essentially different thing from a picture on the same subject by another artist; and so of a book composed by an author; or any other act or thing where the skill, credit, or other personal quality or circumstance of the party, is a distinctive characteristic of the thing contracted for, or a material inducement to the contract.

Therefore, if a contract comes within either of the qualifications above stated, then it is not assignable. But, if it does not—that is to say, if the language used does not exclude the idea of performance by another; and the nature of the thing contracted for, or the circumstances of the case, do not show that the skill, credit, or other personal quality or circumstance of the party, was a distinctive characteristic of the thing stipulated for or material inducement to the contract—then the contract is assignable under the law of California. (Decided by the Supreme Court of California, in the case of *Larue vs. Groezinger*, which decision is printed in Volume 24 of the *Pacific Reporter*, page 42.)

Section 1296. — ASSIGNMENT WITHOUT CONSENT.—Since a party cannot release himself from an obligation without the consent of the other party, it is only the benefit of a contract which can be assigned. Thus, a contractor for the erection of a building (if not prohibited by the terms of the contract), may assign his contract to another contractor; and if his assignee goes on and completes the contract, he may recover the price from the owner; but the original contractor, his assignor, will still be liable on the contract, unless the owner consents to hold responsible only the assignee. (Decided by the Supreme Court of California, in the case of *Anderson vs. De Urioste*, which decision is printed in Volume 31 of the *Pacific Reporter*, page 266.)

Civil Code, Section 1457.

Section 1297.—VERBAL OR WRITTEN ASSIGNMENTS.—An assignment of a written contract must be in writing.

An open account, or debt, not evidenced by a contract in writing, may be assigned verbally.

An ordinary contract may be assigned by writing on the back of the contract, or by a more formal and separate paper, at the option of the parties.

Section 1298.—TIME OF ASSIGNMENT.—It is immaterial when the assignment is made. An indebtedness due for services may be assigned either before or after the services are completed, and it will be a good assignment. (Decided by the District Court of Appeals, in the case of Union Collection Co. vs. National Fertilizer Co., which decision is printed in Volume 82 of the Pacific Reporter, page 1129.)

Section 1299.—ASSIGNMENT OF WIFE'S EARNINGS.—A wife's earnings may be her separate property, by agreement with her husband, or because of her living separate from him; and where this is so, she may assign her claim for wages. (Decided by the District Court of Appeals, in the case of Greve vs. Echo Oil Co., which decision is printed in Volume 96 of the Pacific Reporter, page 904.)

Section 1300.—ASSIGNMENT OF WAGES.—An assignment of wages or salary to be earned, under an existing employment, may be made, and will be valid if made in good faith and for a valuable consideration. The assignment will be good, although the assignor works from day to day, and is hired for no specified time, or may work by the piece, and his wages per month vary, and he may be discharged at any time. (Decided by the District Court of Appeals, in the case of Cox vs. Hughes, which decision is printed in Volume 102 of the Pacific Reporter, page 956.)

Section 1301.—ORDER DRAWN ON DEBTOR.—An order drawn by a creditor on his debtor, for the whole amount of the indebtedness, operates as an equitable assignment of the debt to the payee, and a verbal acceptance of the order by the debtor is valid. (Decided by the Supreme Court of California, in the case of *Joyce vs. Wing Yet Lung*, which decision is printed in Volume 25 of the *Pacific Reporter*, page 545.)

Section 1302.—NON-NEGOTIABLE CONTRACTS.—A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.
Civil Code, Section 1459.

Section 1303.—ASSIGNMENT BY CORPORATION.—The secretary and general manager of a corporation may assign accounts, under a general authorization, the adoption of a special resolution authorizing it being unnecessary. (Decided by the Supreme Court of California, in the case of *Fuller vs. Arnold*, which decision is printed in Volume 33 of the *Pacific Reporter*, page 445.)

Section 1304.—DAMAGES FOR TORT.—A claim for damages for tort, as, for libel, or slander, or personal injuries by reason of accident, cannot be assigned. In order to be an assignable claim, it must be one which is founded upon a contract.

Section 1305.—FORM OF ASSIGNMENT OF CONTRACT.—The following is a form of assignment, to be annexed to a written contract. If the contract itself is acknowledged, the assignment should be acknowledged.

Know all Men by these Presents: That we.....
and....., named in the annexed instrument,
in consideration of the sum of.....dollars, gold

coin of the United States, to us in hand paid by.....
and....., of the City and County of
 San Francisco, and State of California, the receipt whereof
 is hereby acknowledged, do, by these presents, sell and
 transfer, to the said.....and.....,
 their heirs and assigns, the said instrument, and all our
 right, title, and interest in and to the same, authorizing them
 in our names, or otherwise, but at their own cost, charge,
 and expense, to enforce the same according to the tenor
 thereof, and to take all measures which may be necessary
 for the recovery of the within instrument.

.....

Section 1306.—FORM OF INDORSED ASSIGNMENT.—The following is a form of assignment to be indorsed on the back of a contract:

For Value Received, I do hereby transfer and assign, to
, his heirs and assigns forever,
 all my right, title, and interests, in, to, and under the within
 instrument.

.....

Section 1307.—FORM OF ASSIGNMENT OF DEBT DUE.—The following is a form of assignment of debt due:

Know all Men by these Presents: That I,.....,
 of....., for and in consideration of the sum
 of.....dollars, to me paid by.....,
 of....., the receipt whereof is hereby
 acknowledged, have sold, and by these presents do sell,
 assign, transfer, and set over, unto the said.....,
 a certain debt due me from....., amounting
 to the sum of.....dollars, for goods sold and
 delivered (or, work, labor, and services), with full power
 to sue for, collect, and discharge, or sell and assign the same.
 And I hereby covenant, that the said sum of.....
 dollars is justly due as aforesaid.

.....

Section 1308.—FORM OF ASSIGNMENT OF ACCOUNT.—The following is a form of assignment of an account, which may be indorsed on the back of the bill:

For Value Received, I hereby sell and assign to.....
, the within account, which is justly due from the
 within named....., and I hereby authorize
 the said.....to collect the same.

Section 1309.—FORM OF ASSIGNMENT OF LEASE.—For a form of assignment of lease, see the subject, “Landlord and Tenant.”

Section 1310.—FORM OF ASSIGNMENT OF MORTGAGE.—For a form of assignment of mortgage, see the subject “Mortgages.”

Section 1311.—FORM OF ASSIGNMENT OF CONTRACT FOR SALE OF REAL ESTATE.—The following is a form of assignment of a contract for the sale of real estate:

Know all Men by these Presents: That I,.....,
 for and in consideration of the sum of.....dollars,
 gold coin of the United States, to me paid by.....,
 do, by these presents, sell, transfer, assign and set over unto
 the said....., a contract for the sale
 of certain real estate, described as follows, to-wit:

.....
 (Description.)

which said contract was made and executed by.....
 to the said....., and bears date the.....
 day of.....191., to have and to hold the same
 unto the said....., his heirs, executors,
 administrators, and assigns; subject, nevertheless, to the
 covenants, conditions, and payments therein mentioned. And
 I hereby fully authorize and empower the said.....,
 upon his performance of the said covenants and conditions,
 to demand and receive of the said....., the
 deed covenanted to be given in the said contract, in the
 same manner, to all intents and purposes, as I myself might
 or could do, were these presents not executed.

Guaranty of Accounts.

Section 1312.—GUARANTY DEFINED.—A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

A person may become guarantor even without the knowledge or consent of the principal.

Civil Code, Sections 2787, 2788.

Section 1313.—CONSIDERATION.—Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Civil Code, Section 2792.

Section 1314.—GUARANTY MUST BE IN WRITING.—A guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

There are some cases in which a promise is made to answer for the obligation of another, where the promise is deemed an original obligation of the person making it, and in such cases the promise need not be in writing. But in ordinary cases of guaranty of accounts, where one person promises to answer for the debt of another, the promise must be in writing.

Civil Code, Section 2793.

Section 1315.—OFFER TO BECOME GUARANTOR.—A mere offer to become a guarantor is not binding, until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

Civil Code, Section 2795.

Section 1316.—GUARANTY THAT AN OBLIGATION IS GOOD OR COLLECTABLE.—A guaranty to

the effect that an obligation is good, or is collectable, imports that the debtor is solvent, and that the demand is collectable by the usual legal proceedings, if taken with reasonable diligence. Such a guaranty is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby. Where there is such a guaranty, the removal of the principal from the state, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

Civil Code, Sections 2800, 2801, 2802.

Section 1317.—LIABILITY OF GUARANTOR.—A guaranty is to be deemed unconditional unless its terms impart some condition precedent to the liability of the guarantor.

A guarantor of payment of an account is liable to the guarantee immediately upon the default of the principal, and without demand or notice. Therefore, if the debtor fails to pay the account at the time agreed upon, the law does not require the creditor to notify the guarantor, or to make any demand upon him; but the creditor may immediately sue the guarantor for the debtor's account.

Civil Code, Sections 2806, 2807.

Section 1318.—LIABILITY UPON GUARANTY OF A CONDITIONAL OBLIGATION.—Where one guarantees a conditional obligation, his liability is the same in extent as that of the principal; and he is not entitled to notice of the default of the principal, unless he is unable by reasonable diligence to acquire information of such default, and the creditor has actual notice of his inability to acquire such information.

Civil Code, Section 2808.

Section 1319.—CONTINUING GUARANTY.—A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or

from time to time renew it after it has been satisfied, is called a continuing guaranty.

A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transaction which he does not renounce.

Civil Code, Sections 2814, 2815.

Section 1320.—EXONERATION OF GUARANTORS.—A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy.

The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

Civil Code, Sections 2819, 2820, 2822, 2823, 2824.

Section 1321.—DEATH OF GUARANTOR.—A guaranty for future advances terminates, when the guarantor dies, and the guarantee has notice of his death. (Decided by the Supreme Court of California, in the case of *Valentine vs. Donohoe-Kelly Banking Co.*, which decision is printed in volume 65 of the *Pacific Reporter*, page 381.)

Section 1322.—JUDGMENT AGAINST PRINCIPAL.—Where a creditor has recovered a judgment against the principal debtor, which remains unsatisfied, a guaranty against whom judgment is recovered on his guaranty is, on payment thereof, entitled to an assignment of the judgment against the principal. (Decided by the Supreme Court of California, in the case of Clark vs. Chapman, which decision is printed in volume 32 of the Pacific Reporter, page 812.)

Section 1323.—GUARANTY MUST BE CERTAIN.—The writing creating a guaranty must be certain and explicit, so that the intention to guaranty the payment can be plainly seen. For instance, if one person should receive a letter from another, making inquiry regarding the financial standing of a third person, and should answer, "You may rest assured that you will get your pay for all work done," this would not be a guaranty, because it would not contain any promise to stand good for the debts of that person. The letter would be merely an expression of opinion. To constitute a guaranty, there would have to appear in it some promise to answer for the debt or default of another. (Decided by the Supreme Court of California, in the case of Switzer vs. Baker, which decision is printed in volume 30 of the Pacific Reporter, page 761.)

Section 1324.—FORM OF GUARANTY OF ACCOUNT.—The following is a form of guaranty of account:

	San Francisco, Cal.,	
	.....	191.....
To Jones & Smith,		
402 Market Street,		
San Francisco, Cal		
Gentlemen: I hereby guaranty to you the account of		
Henry Green, for goods purchased by him, or for work and		
labor performed for him, during the term of six months		
from date hereof and up to the amount of.....dollars.		
		

Powers of Attorney.

Section 1325.—POWER OF ATTORNEY MUST BE IN WRITING.—A power of attorney must be in writing, and subscribed by the grantor, or his agent. If subscribed by an agent of the grantor, the agent's authority to sign must be in writing. If it is intended to be recorded, it must be acknowledged.

Code of Civil Procedure, Section 1971.

Section 1326.—MARRIED WOMAN'S POWER OF ATTORNEY.—A married woman may make, execute, and revoke powers of attorney for the sale, conveyance, or encumbrance of her real or personal estate, which shall have the same effect as if she were unmarried, and may be acknowledged in the same manner as a grant of real property.

Civil Code, Section 1094.

Section 1327.—SIGNATURE OF ATTORNEY IN FACT.—When an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact.

Civil Code, Section 1095.

Section 1328.—REVOCATION OF POWER OF ATTORNEY.—No instrument containing a power to convey or execute instruments affecting real property, which has been recorded, is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded, in the same office in which the instrument containing the power was recorded.

Civil Code, Section 1216.

Section 1329.—REVOCATION OF POWER OF AN AGENT.—Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by:

1. Its revocation by the principal;
2. His death; or,
3. His incapacity to contract.

Civil Code, Section 2356.

Section 1330.—POWER OF ATTORNEY COUPLED WITH AN INTEREST.—Where the power of attorney covers property in which the grantee has an interest, the power is not revoked by the death of the principal.

Section 1331.—FORM OF GENERAL POWER OF ATTORNEY.—The following is a form of general power of attorney:

Know all Men by these Presents:

That we,and.....
of the city and county of San Francisco, state of California,
have made, constituted and appointed, and by these presents
do make, constitute, and appoint....., of
said city and county, our true and lawful attorney for us
and in our names, place, and stead, and for our use and
benefit, to ask, demand, sue for, recover, collect and receive
all such sums of money, debts, dues, accounts, legacies, be-
quests, interests, dividends, annuities and demands whatso-
ever as are now or shall hereafter become due, owing, pay-
able or belonging to us, and have, use and take all lawful
ways and means in our names or otherwise for the recovery
thereof, by attachments, arrests, distress or otherwise, and to
compromise and agree for the same, and acquittances or
other sufficient discharges for the same, for us, and in our
names, to make, seal, and deliver; to bargain, contract, agree
for, purchase, receive, and take lands, tenements, heredita-
ments, and accept the seisin and possession of all lands, and
all deeds and other assurances, in the law therefor, and to
lease, let, demise, bargain, sell, remise, release, convey, mort-
gage and hypothecate lands, tenements and hereditaments,
upon such terms and conditions, and under such covenants,
as he shall think fit. Also, to bargain and agree for, buy,
sell, mortgage, hypothecate and in any and every way and
manner deal in and with goods, wares, and merchandise,
choses in action and other property in possession or in action,
and to make, do, and transact all and every kind of business
of what nature or kind soever, and also for us and in our

names, and as our act and deed, to sign, seal, execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, hypothecations, bottomries, charter-parties, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases and satisfaction of mortgage, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

Giving and granting unto our said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as we might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that our said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof we have hereunto set our hands and seals the.....day of....., 191..

.....(Seal)

.....(Seal)

(Acknowledgment in usual form.)

Section 1332.—SPECIAL POWER OF ATTORNEY.

—The following is a form of special power of attorney:

Know all Men by these Presents:

That I,, of the county of Alameda, state of California, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, of, my true and lawful attorney for me and in my name, place, and stead, and for my use, to ask, demand, sue for, collect, and receive all such sums of money which are or shall be due, owing, payable, and belonging to me, or detained from me, in any manner whatsoever, by any person or persons whatsoever.

Giving and granting unto my said attorney full power and authority in and about the premises; and to use all due means, course and process in the law for the full, effectual, and complete execution thereof, and in my name to make, execute and deliver all and every instrument in writing under seal, or otherwise, and for the premises to appear and my person to represent before any governor, judge, officer, and minister of the law whatsoever, and in any court or courts of judicature, and on my behalf, to prosecute

for debt, fraud and any manner of claims I may have against any person or persons, and to answer, defend, and reply unto all actions, causes, matters, and things whatsoever relating to the premises. Also, to submit any matter in dispute respecting the premises to arbitration or reference. And generally to say, do, act, transact, determine, accomplish and finish all matters and things whatsoever relating to the premises, as fully, amply, and effectually, to all intents and purposes, as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying, confirming, and holding valid all that my said attorney, or his substitute or substitutes, shall lawfully do or cause to be done by virtue of these presents.

In witness whereof, I have hereunto set my hand and seal this.....day of....., 191...

.....
(Acknowledgment in usual form.)

Section 1333.—COMMERCIAL POWER OF ATTORNEY, WITH AUTHORITY TO SELL REAL ESTATE.—Cowdery's Book of Forms, which lawyers use in practice, contains a form of commercial power of attorney, also giving authority to sell real estate. This form is given below. It appears to have been carefully prepared:

Know all men by these Presents:

That I,....., of the County of Santa Clara, State of California, have made, constituted, and appointed, and by these presents do make, constitute and appoint....., of the County of Alameda, State of California, my true and lawful attorney, for me, and in my name, and on my behalf, to ask, demand, recover and receive, all and any sum or sums of money, debts, dues, merchandise, or effects, due, payable, coming, or belonging, or which may at any time be due, payable, or belonging to me, from any person or persons whatsoever; to sell all, or any part, of said goods, merchandise and effects, which may come to his possession or knowledge, on such credit, and for such prices as he may deem meet; to purchase any goods, merchandise, specie, currency, mining or other kinds of stock or other commodities, on my account for such prices and to such

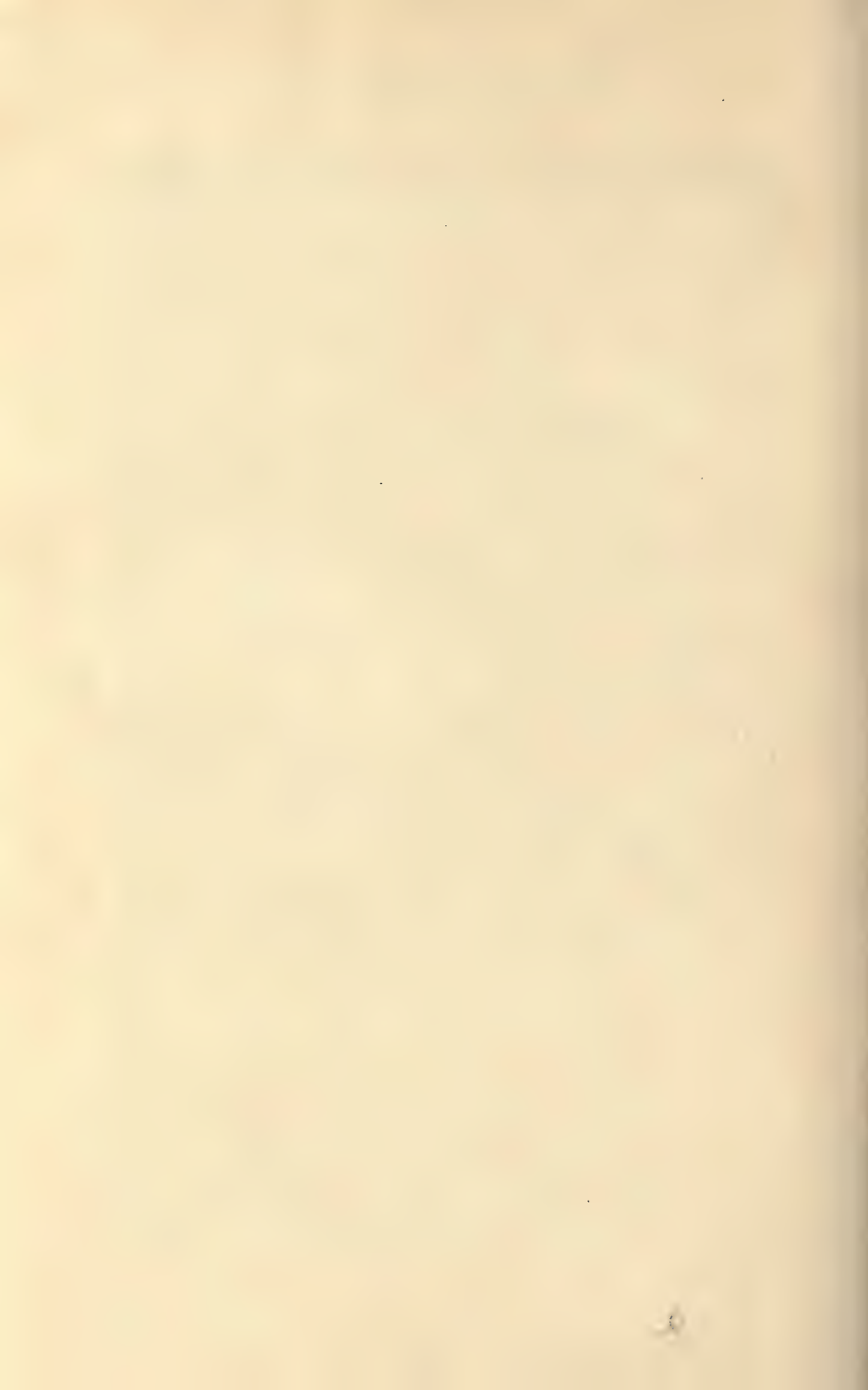
amount as he may deem meet, and the same to sell again for my benefit and on my account, for any prices whatsoever, to ship or transport the same, or any part thereof, on my behalf and account, to any post or posts, place or places, whatsoever, in any vessel or vessels, and with and to any person or persons whatsoever, and there barter, exchange, and dispose of the same; to insure and cause insurance to be made, of any such goods, merchandise, specie or other commodities, or of any part thereof, at such premiums, and for such risks as he may deem meet; to accept any bill or bills of exchange or orders, make and execute any note or notes of hand, bond or bonds, or other instruments or contracts, in my name, and on my account, to and for any amount which he may deem meet or expedient; to sell, barter, exchange, or dispose of any real estate of which I am now seized or possessed in fee simple, or for any less estate, to any person or persons, for any price, or in any manner whatsoever, and for these purposes to execute and acknowledge any deed or deeds, lease or leases, or other assurance or assurances, with general covenants of warranty against all persons, or any other covenants whatsoever, as he may deem expedient; to purchase any real estate on my account, in fee simple or otherwise, at any price of any exchange whatsoever, and for these purposes to receive, confirm, make, and execute, any contracts, deeds, conveyances, or other instruments whatsoever; to settle and adjust all partnership accounts and demands, and all other accounts or demands now subsisting, or which may hereafter subsist between me and any person or persons whatsoever, and submit the same to and decide them by arbitration; to compound for any debts, dues, or demands owing, or which may hereafter be owing to me, and to take less than the whole, or otherwise to agree for the same, in such manner, and on such terms as he, in his discretion, may deem proper; and for all and any of these purposes, to make and execute any releases, compromises, compositions, agreements, or contracts, by deed or otherwise, in his opinion necessary and expedient in the premises; to pay and discharge all debts and demands due and payable, or which may hereafter become due and payable by me unto any person or persons whatsoever; to enter into any lands or other real estate to which I am or may be entitled, and to recover the possession thereof, and damages for any injury done thereto, and to distrain for rent due thereon, and also to commence and prosecute unto final judgment and execution, any suit or

suits, action or actions, real, personal, or mixed, which he shall deem proper for the recovery, possession, or enjoyment of any matter or thing which is or which may hereafter be due, payable, owing, belonging, accruing, or appertaining to me, for or by reason of the premises, or any part thereof, and, in any such suits or actions, for me in person, or by such attorney or attorneys, or counsel, he may deem necessary or proper to retain or employ to appear and plead, before any courts or tribunals having jurisdiction thereof, and all stipulations, undertakings, recognizances and other requisites in any suits or actions, and any question arising on the same, by arbitration or other compromise, and of all receipts and recoveries in the premises, due acquittances and discharges to execute and deliver, and generally to do and perform all matters and things, transact all business, make, execute and acknowledge all contracts, orders, deeds, mortgages, satisfaction of mortgages, leases and assignments of the same, and all other writing, assurances, and instruments of every kind, which may be requisite or proper to effectuate all or any of the premises, or any other matter or thing appertaining or belonging to me, with the same powers, and to all intents and purposes, with the same validity as I could, if personally present (giving and granting unto my said attorney, full power to substitute one or more attorneys under him, my said attorney, in or concerning the premises, or any part thereof, and the same at his pleasure to revoke); and hereby ratifying and confirming whatsoever my said attorney (or, his substitute or substitutes) shall and may do, by virtue hereof, in the premises.

In witness whereof, I have hereunto set my hand and seal this.....day of....., 191..

.....(Seal.)

(Acknowledgment in usual form.) 24,



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